

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION PURCHASING OFFICE, FINANCE DIVISION

[R05-375]

PREAMBLE

1. Sections Affected

Rulemaking Action

R2-7-101	Repeal
R2-7-101	New Section
R2-7-102	Repeal
R2-7-102	New Section
R2-7-103	Repeal
R2-7-103	New Section
R2-7-104	Repeal
R2-7-105	Repeal
R2-7-201	Repeal
R2-7-201	New Section
R2-7-202	Repeal
R2-7-202	New Section
R2-7-203	Repeal
R2-7-203	New Section
R2-7-204	New Section
R2-7-205	New Section
R2-7-206	New Section
R2-7-207	New Section
R2-7-208	New Section
R2-7-209	New Section
R2-7-301	Repeal
R2-7-302	Repeal
R2-7-303	Repeal
R2-7-304	Repeal
R2-7-305	Repeal
R2-7-306	Repeal
R2-7-307	Repeal
R2-7-308	Repeal
R2-7-309	Repeal
R2-7-310	Repeal
R2-7-311	Repeal
R2-7-312	Repeal
R2-7-313	Repeal
R2-7-314	Repeal
R2-7-315	Repeal
R2-7-316	Repeal
R2-7-317	Repeal
R2-7-318	Repeal
R2-7-319	Repeal

Notices of Proposed Rulemaking

R2-7-320	Repeal
R2-7-321	Repeal
R2-7-322	Repeal
R2-7-323	Repeal
R2-7-324	Repeal
R2-7-325	Repeal
R2-7-326	Repeal
R2-7-327	Repeal
R2-7-328	Repeal
R2-7-329	Repeal
R2-7-330	Repeal
R2-7-331	Repeal
R2-7-332	Repeal
R2-7-333	Repeal
R2-7-334	Repeal
R2-7-335	Repeal
R2-7-336	Repeal
R2-7-337	Repeal
R2-7-338	Repeal
R2-7-339	Repeal
R2-7-340	Repeal
R2-7-341	Repeal
R2-7-342	Repeal
R2-7-343	Repeal
R2-7-344	Repeal
R2-7-345	Repeal
R2-7-346	Repeal
R2-7-347	Repeal
R2-7-348	Repeal
R2-7-349	Repeal
R2-7-350	Repeal
R2-7-351	Repeal
R2-7-352	Repeal
R2-7-353	Repeal
R2-7-354	Repeal
R2-7-355	Repeal
R2-7-356	Repeal
R2-7-357	Repeal
R2-7-358	Repeal
R2-7-359	Repeal
R2-7-360	Repeal
R2-7-361	Repeal
R2-7-362	Repeal
R2-7-363	Repeal
R2-7-364	Repeal
R2-7-365	Repeal
R2-7-366	Repeal
R2-7-367	Repeal
R2-7-368	Repeal
R2-7-369	Repeal
R2-7-370	Repeal
Part A	New Part
R2-7-A301	New Section
Part B	New Part
R2-7-B301	New Section
R2-7-B302	New Section
R2-7-B303	New Section
R2-7-B304	New Section
R2-7-B305	New Section
R2-7-B306	New Section
R2-7-B307	New Section
R2-7-B308	New Section
R2-7-B309	New Section
R2-7-B310	New Section

Notices of Proposed Rulemaking

R2-7-B311	New Section
R2-7-B312	New Section
R2-7-B313	New Section
R2-7-B314	New Section
R2-7-B315	New Section
R2-7-B316	New Section
Part C	New Part
R2-7-C301	New Section
R2-7-C302	New Section
R2-7-C303	New Section
R2-7-C304	New Section
R2-7-C305	New Section
R2-7-C306	New Section
R2-7-C307	New Section
R2-7-C308	New Section
R2-7-C309	New Section
R2-7-C310	New Section
R2-7-C311	New Section
R2-7-C312	New Section
R2-7-C313	New Section
R2-7-C314	New Section
R2-7-C315	New Section
R2-7-C316	New Section
R2-7-C317	New Section
R2-7-C318	New Section
Part D	New Part
R2-7-D301	New Section
R2-7-D302	New Section
R2-7-D303	New Section
R2-7-D304	New Section
R2-7-D305	New Section
Part E	New Part
R2-7-E301	New Section
R2-7-E302	New Section
R2-7-E303	New Section
Part F	New Part
R2-7-F301	New Section
R2-7-F302	New Section
R2-7-F303	New Section
R2-7-F304	New Section
R2-7-F305	New Section
R2-7-F306	New Section
R2-7-F307	New Section
R2-7-F308	New Section
R2-7-F309	New Section
R2-7-F310	New Section
Part G	New Part
R2-7-G301	New Section
R2-7-G302	New Section
R2-7-G303	New Section
R2-7-G304	New Section
R2-7-G305	New Section
R2-7-401	Repeal
R2-7-401	New Section
R2-7-402	Amend
R2-7-403	Amend
R2-7-404	Repeal
R2-7-405	Repeal
R2-7-406	Repeal
R2-7-407	Repeal
R2-7-408	Repeal
R2-7-409	Repeal
R2-7-410	Repeal
R2-7-411	Repeal

Notices of Proposed Rulemaking

R2-7-501	Repeal
R2-7-501	New Section
R2-7-502	Amend
R2-7-503	Repeal
R2-7-503	New Section
R2-7-504	Repeal
R2-7-504	New Section
R2-7-505	Repeal
R2-7-505	New Section
R2-7-506	Amend
R2-7-507	Repeal
R2-7-507	New Section
R2-7-508	New Section
R2-7-509	Repeal
R2-7-509	New Section
R2-7-510	Repeal
R2-7-510	New Section
R2-7-511	Repeal
R2-7-511	New Section
R2-7-512	Repeal
R2-7-513	Repeal
R2-7-514	Repeal
R2-7-515	Repeal
R2-7-601	Repeal
R2-7-601	New Section
R2-7-602	New Section
R2-7-603	New Section
R2-7-604	New Section
R2-7-605	New Section
R2-7-606	New Section
R2-7-701	Amend
R2-7-702	New Section
R2-7-703	New Section
R2-7-704	New Section
R2-7-705	New Section
R2-7-901	Repeal
R2-7-902	Repeal
R2-7-903	Repeal
R2-7-904	Repeal
R2-7-905	Repeal
R2-7-906	Repeal
R2-7-907	Repeal
R2-7-908	Repeal
R2-7-909	Repeal
R2-7-910	Repeal
R2-7-911	Repeal
R2-7-912	Repeal
R2-7-913	Repeal
R2-7-914	Repeal
R2-7-915	Repeal
R2-7-916	Repeal
R2-7-917	Repeal
R2-7-918	Repeal
R2-7-919	Repeal
R2-7-920	Repeal
R2-7-921	Repeal
R2-7-922	Repeal
R2-7-923	Repeal
R2-7-924	Repeal
R2-7-925	Repeal
R2-7-926	Repeal
R2-7-927	Repeal
R2-7-928	Repeal
R2-7-929	Repeal

Notices of Proposed Rulemaking

R2-7-930	Repeal
R2-7-931	Repeal
R2-7-932	Repeal
R2-7-933	Repeal
R2-7-934	Repeal
R2-7-935	Repeal
R2-7-936	Repeal
R2-7-937	Repeal
Part A	New Part
R2-7-A901	New Section
R2-7-A902	New Section
R2-7-A903	New Section
R2-7-A904	New Section
R2-7-A905	New Section
R2-7-A906	New Section
R2-7-A907	New Section
R2-7-A908	New Section
R2-7-A909	New Section
R2-7-A910	New Section
R2-7-A911	New Section
Part B	New Part
R2-7-B901	New Section
R2-7-B902	New Section
R2-7-B903	New Section
R2-7-B904	New Section
R2-7-B905	New Section
Part C	New Part
R2-7-C901	New Section
R2-7-C902	New Section
R2-7-C903	New Section
R2-7-C904	New Section
R2-7-C905	New Section
R2-7-C906	New Section
R2-7-C907	New Section
R2-7-C908	New Section
R2-7-C909	New Section
R2-7-C910	New Section
R2-7-C911	New Section
Part D	New Part
R2-7-D901	New Section
R2-7-D902	New Section
R2-7-1001	Repeal
R2-7-1001	New Section
R2-7-1002	Repeal
R2-7-1002	New Section
R2-7-1003	Repeal
R2-7-1003	New Section
R2-7-1004	Repeal
R2-7-1004	New Section
R2-7-1005	Repeal
R2-7-1005	New Section
R2-7-1006	Repeal
R2-7-1006	New Section
R2-7-1007	Repeal
R2-7-1007	New Section
R2-7-1008	Repeal
R2-7-1008	New Section
R2-7-1009	Repeal
R2-7-1009	New Section
R2-7-1010	Repeal
Article 13	New Article
R2-7-1301	New Section

Notices of Proposed Rulemaking

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. § 41-2511 et seq.

Implementing statutes: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2516, 41-2531 through 41-2558, 41-2561 through 41-2568, 41-2571 through 41-2579, 41-2585 through 41-2586, 41-2591, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661 and 41-2662

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2742, July 22, 2005

Notice of Rulemaking Docket Opening: 11 A.A.R. 4141, October 21, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Tim Boncoskey, Assistant Director

Address: Arizona Department of Administration – Enterprise Procurement Services
100 N. 15th Ave., 1st Floor, Suite 104
Phoenix, AZ 85007

Telephone: (602) 542-1422

Fax: (602) 542-5508

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Subject matter of these rules is the procurement and management of all materials, services and construction for the state of Arizona. The statutes and the rules are based on the American Bar Association Model Procurement Code and are commonly referred to as the "Arizona Procurement Code." The purpose of this rulemaking is to address the issues identified in the previous five-year review report approved by the Governor's Regulatory Review Council and to improve the procurement process. Additionally, the rulemaking will update the rules and bring them into conformance with current rule writing standards, statutes and current practice.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The agency did not utilize a study for evaluating or justifying the rulemaking.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

Identification of the Proposed Rule Package:

The proposed rulemaking governs the procurement and management of all materials, services and construction for the state of Arizona. The rules are based on the American Bar Association's Model Procurement Code and known as the "Arizona Procurement Code."

Identification of the Impacted Parties:

The parties affected by this rulemaking include: state government officials and managers, state government procurement employees, suppliers including small businesses, minority and women owned businesses, non-profit organizations that provide services to state government, associations that represent various business groups, attorneys, local government units including cities, counties and school districts.

Benefits / Costs of these rule changes:

The benefits of this rulemaking are greater efficiency in public procurement, reduced operating cost of public procurement, increased opportunities for small, minority and women-owned businesses, improved understanding and ease of use of rules for government agencies and suppliers and more open access to procurement opportunities and information.

Probable Impact on Small Business:

The impact on small businesses should be positive. Small businesses will benefit from more open access to contracting opportunities with the state. In addition, the proposed changes in this rulemaking should provide a better understanding of the rules and their function to small business than do the rules currently in place.

Probable Effects on State Revenue:

There should be no immediate measurable impact on state revenues or expenses. The long term effect should be a reduction in costs resulting from greater efficiency in the procurement program and the ability to negotiate lower costs for the state.

Notices of Proposed Rulemaking

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Tim Boncoskey, Assistant Director
Address: Arizona Department of Administration – Enterprise Procurement Services
100 N. 15th Ave., 1st Floor, Suite 104
Phoenix, AZ 85007
Telephone: (602) 542-1422
Fax: (602) 542-5508

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department has scheduled the following oral proceeding to obtain oral comment on the proposed rulemaking for A.A.C. 7, Articles 1 through 13:

Date: November 28, 2005
Time: 9:00 a.m.
Location: 100 N. 15th Ave., 1st Floor, Suite 104, Room 104A
Phoenix, AZ 85007
Nature: Oral Proceeding

Written comments on the proposed rulemaking or the preliminary economic, small business, and consumer impact summary may be submitted to the individual listed in items 4 and 9 until the close of record at 5:00 p.m. on December 2, 2005.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

Code of Federal Regulations, 48 CFR, Chapter 1, Subchapter e, Part 31 (September 2001). Located in Article 7. Cost Principles in Section R2-7-701.

13. The full text of the rules follows:

TITLE 2. ADMINISTRATION

**CHAPTER 7. DEPARTMENT OF ADMINISTRATION
PURCHASING OFFICE, FINANCE DIVISION**

ARTICLE 1. GENERAL PROVISIONS

Section	
R2-7-101.	Written Determinations <u>Definitions</u>
R2-7-102.	Definitions <u>Written Determinations</u>
R2-7-103.	Time and Place of Market Price <u>Confidential Information</u>
R2-7-104.	Confidential Information <u>Repealed</u>
R2-7-105.	State Employee or Official Use of Contracts Prohibited <u>Repealed</u>

ARTICLE 2. PROCUREMENT ORGANIZATION

Section	
R2-7-201.	Delegation of Procurement Authority <u>State Procurement Administrator: Duties and Qualifications</u>
R2-7-202.	Delegation of Authority for Procurements Not Exceeding an Aggregate Amount of \$5,000 <u>Delegation of Procurement Authority to State Governmental Units</u>
R2-7-203.	Procurement Advisory Groups <u>Agency Chief Procurement Officer</u>
R2-7-204.	<u>State Employee or Public Officer Use of State Contracts</u>
R2-7-205.	<u>Procurement Requests by Purchasing Agencies</u>
R2-7-206.	<u>Authorized Procurement Officers</u>
R2-7-207.	<u>Resolution of Intra-agency Procurement Disputes</u>

Notices of Proposed Rulemaking

R2-7-208. Authorization of Electronic Transactions
R2-7-209. Prospective Suppliers List

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

Section

R2-7-301. Definitions Repealed
R2-7-302. General Provisions Repealed
R2-7-303. Extension of Offer Acceptance Time Repealed
R2-7-304. Purchase Requests Repealed
R2-7-305. Assignment of Rights and Duties Repealed
R2-7-306. Change of Name Repealed
R2-7-307. Installment Purchases Repealed
R2-7-308. Multiple source Contracting Repealed
R2-7-309. Purchase of Items Separately from Construction Contract Repealed
R2-7-310. Contract Change Orders and Amendments Repealed
R2-7-311. Arizona State Contracts Repealed
R2-7-312. Prospective Vendors Lists Repealed
R2-7-313. Invitation for Bids Repealed
R2-7-314. Pre-bid Conferences Repealed
R2-7-315. Amendments to Invitations for Bids Repealed
R2-7-316. Pre-opening Modification or Withdrawal of Bids Repealed
R2-7-317. Late Bids, Late Withdrawals, and Late Modifications Repealed
R2-7-318. Receipt, Opening, and Recording of Bids Repealed
R2-7-319. Mistakes in Bids Repealed
R2-7-320. Bid Evaluation and Award Repealed
R2-7-321. Only One Bid Received Repealed
R2-7-322. Multi-step Sealed Bidding Repealed
R2-7-323. Phase One of Multi-step Sealed Bidding Repealed
R2-7-324. Phase Two of Multi-step Sealed Bidding Repealed
R2-7-325. Competitive Sealed Proposals Repealed
R2-7-326. Request for Proposals Repealed
R2-7-327. Pre-proposal Conferences Repealed
R2-7-328. Late Proposals, Late Modifications or Late Withdrawals Repealed
R2-7-329. Receipt of Proposals Repealed
R2-7-330. Evaluation of Proposals Repealed
R2-7-331. Discussions with Individual Offerors Repealed
R2-7-332. Best and Final Offers Repealed
R2-7-333. Mistakes in Proposals Repealed
R2-7-334. Contract Award Repealed
R2-7-335. Small Business Set-aside Repealed
R2-7-336. Procurements Not Exceeding an Aggregate Amount of \$25,000 Repealed
R2-7-337. Other Procurements Not Exceeding an Aggregate Amount of \$10,000 Repealed
R2-7-338. Sole Source Procurement Repealed
R2-7-339. Emergency Procurements Repealed
R2-7-340. Emergency Procurement Procedure Repealed
R2-7-341. Competitive Selection Procedures for Services of Clergy, Physicians, Dentists, Legal Counsel, or Certified Public Accountants Repealed
R2-7-342. Statement of Qualifications Repealed
R2-7-343. Request for Proposals Repealed
R2-7-344. Receipt of Proposals Repealed
R2-7-345. Evaluation of Proposals Repealed
R2-7-346. Discussions with Individual Offerors Repealed
R2-7-347. Evaluation and Contract Award Where Price is an Evaluation Factor Repealed
R2-7-348. Selection and Contract Award Where Price is not an Evaluation Factor Repealed
R2-7-349. Annual Report Repealed
R2-7-350. Cancellation of Solicitations; Rejection of Bids or Proposals Repealed
R2-7-351. Cancellation of Solicitation Before the Date and Time for Receipt of Bids and Proposals Repealed
R2-7-352. Cancellation of Solicitation After Receipt of Bids or Proposals Repealed

Notices of Proposed Rulemaking

R2-7-353.	<u>Rejection of Individual Bids or Proposals Repealed</u>
R2-7-354.	<u>Responsibility of Bidders and Offerors Repealed</u>
R2-7-355.	<u>Prequalification Repealed</u>
R2-7-356.	<u>Bid and Performance Bonds for Material or Service Contracts Repealed</u>
R2-7-357.	<u>Submission of Cost or Pricing Data Repealed</u>
R2-7-358.	<u>Certification of Current Cost or Pricing Data Repealed</u>
R2-7-359.	<u>Refusal to Submit Cost or Pricing Data Repealed</u>
R2-7-360.	<u>Defective Cost or Pricing Data Repealed</u>
R2-7-361.	<u>Price or Cost Analysis Repealed</u>
R2-7-362.	<u>Authority to Use Contract Types Repealed</u>
R2-7-363.	<u>Fixed-price Contracts Repealed</u>
R2-7-364.	<u>Lease and Lease purchase Contracts Repealed</u>
R2-7-365.	<u>Cost reimbursement and Cost Incentive Contracts Repealed</u>
R2-7-366.	<u>Time and Materials Contracts and Labor Hour Contracts Repealed</u>
R2-7-367.	<u>Option Provisions Repealed</u>
R2-7-368.	<u>Approval of Accounting System Repealed</u>
R2-7-369.	<u>Anticompetitive practices among bidders or offerors Repealed</u>
R2-7-370.	<u>Record of Procurement Actions Repealed</u>

PART A. GENERAL PROVISIONS

<u>R2-7-A301.</u>	<u>Source Selection Method: Determination Factors</u>
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PART B. COMPETITIVE SEALED BIDDING

<u>R2-7-B301.</u>	<u>Solicitation</u>
<u>R2-7-B302.</u>	<u>Pre-Offer Conferences</u>
<u>R2-7-B303.</u>	<u>Solicitation Amendment</u>
<u>R2-7-B304.</u>	<u>Modification or Withdrawal of Offer Before Offer Due Date and Time</u>
<u>R2-7-B305.</u>	<u>Cancellation of a Solicitation Before Offer Due Date and Time</u>
<u>R2-7-B306.</u>	<u>Receipt, Opening, and Recording of Offers</u>
<u>R2-7-B307.</u>	<u>Late Offers, Modifications, Withdrawals</u>
<u>R2-7-B308.</u>	<u>Cancellation of Solicitation After Receipt of Offers and Prior to Award</u>
<u>R2-7-B309.</u>	<u>One Offer Received</u>
<u>R2-7-B310.</u>	<u>Offer Mistakes Discovered After Offer Opening and Before Award</u>
<u>R2-7-B311.</u>	<u>Extension of Offer Acceptance Period</u>
<u>R2-7-B312.</u>	<u>Bid Evaluation</u>
<u>R2-7-B313.</u>	<u>Responsibility Determinations</u>
<u>R2-7-B314.</u>	<u>Contract Award</u>
<u>R2-7-B315.</u>	<u>Mistakes Discovered After Award</u>
<u>R2-7-B316.</u>	<u>Multistep Sealed Bidding</u>

PART C. COMPETITIVE SEALED PROPOSALS

<u>R2-7-C301.</u>	<u>Solicitation</u>
<u>R2-7-C302.</u>	<u>Pre-Offer Conferences</u>
<u>R2-7-C303.</u>	<u>Solicitation Amendment</u>
<u>R2-7-C304.</u>	<u>Modification or Withdrawal of Offer Before Offer Due Date and Time</u>
<u>R2-7-C305.</u>	<u>Cancellation of Solicitation Before Offer Due Date and Time</u>
<u>R2-7-C306.</u>	<u>Receipt, Opening, and Recording of Offers</u>
<u>R2-7-C307.</u>	<u>Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time</u>
<u>R2-7-C308.</u>	<u>Cancellation of Solicitation After Offer Opening and Prior to Award</u>
<u>R2-7-C309.</u>	<u>Only One Offer Received</u>
<u>R2-7-C310.</u>	<u>Extension of Offer Acceptance Period</u>
<u>R2-7-C311.</u>	<u>Determination of Not Susceptible for Award</u>
<u>R2-7-C312.</u>	<u>Responsibility Determinations</u>
<u>R2-7-C313.</u>	<u>Clarification of Offers</u>
<u>R2-7-C314.</u>	<u>Negotiations with Responsible Offerors and Revisions of Offers</u>
<u>R2-7-C315.</u>	<u>Final Proposal Revisions</u>
<u>R2-7-C316.</u>	<u>Evaluation of Offers</u>
<u>R2-7-C317.</u>	<u>Contract Award</u>
<u>R2-7-C318.</u>	<u>Mistakes Discovered After Award</u>

Notices of Proposed Rulemaking

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

<u>R2-7-D301.</u>	<u>Applicability</u>
<u>R2-7-D302.</u>	<u>Solicitation – Request for Quotation</u>
<u>R2-7-D303.</u>	<u>Request for Quotation Issuance</u>
<u>R2-7-D304.</u>	<u>Contract Award</u>
<u>R2-7-D305.</u>	<u>Purchases of \$5000 and Less</u>

**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN
A.R.S. § 41-2535**

<u>R2-7-E301.</u>	<u>Sole Source Procurements</u>
<u>R2-7-E302.</u>	<u>Emergency Procurements</u>
<u>R2-7-E303.</u>	<u>Competition Impracticable Procurements</u>

**PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS,
LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**

<u>R2-7-F301.</u>	<u>Statement of Qualifications</u>
<u>R2-7-F302.</u>	<u>Solicitation</u>
<u>R2-7-F303.</u>	<u>Solicitation Amendment</u>
<u>R2-7-F304.</u>	<u>Cancellation of Solicitation</u>
<u>R2-7-F305.</u>	<u>Receipt, Opening, and Recording of Offers</u>
<u>R2-7-F306.</u>	<u>Timely and Late Modifications or Withdrawals of Offer</u>
<u>R2-7-F307.</u>	<u>Late Offers</u>
<u>R2-7-F308.</u>	<u>Negotiations with Offerors</u>
<u>R2-7-F309.</u>	<u>Contract Award</u>
<u>R2-7-F310.</u>	<u>Mistakes Discovered After Award</u>

PART G. OTHER SOURCE SELECTION

<u>R2-7-G301.</u>	<u>Request for Information</u>
<u>R2-7-G302.</u>	<u>Demonstration Projects</u>
<u>R2-7-G303.</u>	<u>Unsolicited Proposals</u>
<u>R2-7-G304.</u>	<u>General Services Administration Contracts</u>
<u>R2-7-G305.</u>	<u>Private Public Partnership Contracts</u>

ARTICLE 4. SPECIFICATIONS

Section	
<u>R2-7-401.</u>	<u>Definitions</u> <u>Preparation of Specifications</u>
<u>R2-7-402.</u>	<u>Preparation</u> <u>Utilization of Specifications</u>
<u>R2-7-403.</u>	<u>Content</u> <u>Determination for Use of Brand Name Type Specifications</u>
<u>R2-7-404.</u>	<u>Types of Specifications</u> <u>Repealed</u>
<u>R2-7-405.</u>	<u>Confidentiality</u> <u>Repealed</u>
<u>R2-7-406.</u>	<u>Reserved</u> <u>Repealed</u>
<u>R2-7-407.</u>	<u>Using Agency Advice and Assistance</u> <u>Repealed</u>
<u>R2-7-408.</u>	<u>Preparation and Utilization of Specifications and Plans by Using Agencies</u> <u>Repealed</u>
<u>R2-7-409.</u>	<u>Requirements of Nonrestrictiveness</u> <u>Repealed</u>
<u>R2-7-410.</u>	<u>Preparation of Specifications or Plans by Persons Other Than State Personnel</u> <u>Repealed</u>
<u>R2-7-411.</u>	<u>Conflict of Interest</u> <u>Repealed</u>

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES

Section	
<u>R2-7-501.</u>	<u>Definitions</u> <u>Procurement of Specified Professional and Construction Services</u>
<u>R2-7-502.</u>	<u>Coordination</u> <u>Compliance with the Department</u>
<u>R2-7-503.</u>	<u>Bid Security</u> <u>Procurement of Construction Using Alternate Project Delivery Methods</u>
<u>R2-7-504.</u>	<u>Performance and Payment Bonds</u> <u>Notice</u>
<u>R2-7-505.</u>	<u>Bond Forms</u> <u>Selection Committee</u>
<u>R2-7-506.</u>	<u>The Form of Substitute Bid Security</u>
<u>R2-7-507.</u>	<u>Conditions for Use of Substitute Security</u> <u>Offer Mistakes Discovered After Offer Opening and Before Award</u>

Notices of Proposed Rulemaking

R2-7-508.	Repealed <u>Performance and Payment Bonds</u>
R2-7-509.	Procurement of Specified Professional Services <u>Conditions for Use of Substitute Security in Lieu of Retention</u>
R2-7-510.	Public Notice of Specified Professional Services <u>The Form of Substitute Security in Lieu of Retention</u>
R2-7-511.	Specified Professional Services Selection Committee <u>Individual Job Order Contracting</u>
R2-7-512.	Cancellation or Rejection of the Solicitation <u>Repealed</u>
R2-7-513.	Selection Committee Evaluation <u>Repealed</u>
R2-7-514.	Single Negotiated Fee Method of Award <u>Repealed</u>
R2-7-515.	Multiple Fee Proposal Method of Award <u>Repealed</u>

ARTICLE 6. CONTRACT CLAUSES

Section	
R2-7-601.	Standard Terms and Conditions <u>Contract Clauses</u>
R2-7-602.	Assignment of Rights and Duties
R2-7-603.	Change of Name
R2-7-604.	Contract Change Orders and Amendments
R2-7-605.	Multi-term Contracts
R2-7-606.	Terms and Conditions

ARTICLE 7. COST PRINCIPLES

Section	
R2-7-701.	<u>Cost Principles</u>
R2-7-702.	<u>Determination of Fair and Reasonable Price</u>
R2-7-703.	<u>Submission and Certification of Cost or Pricing Data</u>
R2-7-704.	<u>Refusal to Submit Cost or Pricing Data</u>
R2-7-705.	<u>Defective Cost or Pricing Data</u>

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

Section	
R2-7-901.	Definitions <u>Repealed</u>
R2-7-902.	Resolution of Bid Protests <u>Repealed</u>
R2-7-903.	Filing of a Protest <u>Repealed</u>
R2-7-904.	Time for Filing Protests <u>Repealed</u>
R2-7-905.	Stay of Procurements During the Protest <u>Repealed</u>
R2-7-906.	Confidential Information <u>Repealed</u>
R2-7-907.	Decision by the Procurement Officer <u>Repealed</u>
R2-7-908.	Remedies <u>Repealed</u>
R2-7-909.	Appeals to the Director <u>Repealed</u>
R2-7-910.	Notice of Appeal <u>Repealed</u>
R2-7-911.	Stay of Procurement During Appeal <u>Repealed</u>
R2-7-912.	Agency Report <u>Repealed</u>
R2-7-913.	Dismissal Before Hearing <u>Repealed</u>
R2-7-914.	Hearing <u>Repealed</u>
R2-7-915.	Remedies <u>Repealed</u>
R2-7-916.	Contract Claims <u>Repealed</u>
R2-7-917.	Procurement Officer's Decision <u>Repealed</u>
R2-7-918.	Issuance of a Timely Decision <u>Repealed</u>
R2-7-919.	Appeals and Reports to the Director <u>Repealed</u>
R2-7-920.	Controversies Involving State Claims Against a Contractor <u>Repealed</u>
R2-7-921.	Hearing <u>Repealed</u>
R2-7-922.	Authority to Debar or Suspend <u>Repealed</u>
R2-7-923.	Initiation of Debarment <u>Repealed</u>
R2-7-924.	Period of Debarment <u>Repealed</u>
R2-7-925.	Notice <u>Repealed</u>
R2-7-926.	Notice to Affiliates <u>Repealed</u>
R2-7-927.	Imputed Knowledge <u>Repealed</u>
R2-7-928.	Reinstatement <u>Repealed</u>

Notices of Proposed Rulemaking

R2-7-929.	<u>Limited Participation Repealed</u>
R2-7-930.	<u>Suspension Repealed</u>
R2-7-931.	<u>Period and Scope of Suspension Repealed</u>
R2-7-932.	<u>Notice, Hearing, Determination, and Appeal Repealed</u>
R2-7-933.	<u>Master List Repealed</u>
R2-7-934.	<u>Hearing Procedures Repealed</u>
R2-7-935.	<u>Recommendation by the Hearing Officer Repealed</u>
R2-7-936.	<u>Final Decision by the Director Repealed</u>
R2-7-937.	<u>Rehearing of Director's Decision Repealed</u>

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

R2-7-A901.	<u>Protest of Solicitations and Contract Awards</u>
R2-7-A902.	<u>Stay of Procurements During the Protest</u>
R2-7-A903.	<u>Resolution of Solicitation and Contract Award Protests</u>
R2-7-A904.	<u>Remedies by the Agency Chief Procurement Officer</u>
R2-7-A905.	<u>Appeals to the Director</u>
R2-7-A906.	<u>Notice of Appeal to the Director</u>
R2-7-A907.	<u>Stay of Procurement During Appeal to Director</u>
R2-7-A908.	<u>Agency Report</u>
R2-7-A909.	<u>Remedies by the Director</u>
R2-7-A910.	<u>Dismissal Before Hearing</u>
R2-7-A911.	<u>Hearing</u>

PART B. CONTRACT CLAIMS

R2-7-B901.	<u>Controversies Involving Contract Claims Against the State</u>
R2-7-B902.	<u>Agency Chief Procurement Officer's Decision</u>
R2-7-B903.	<u>Issuance of a Timely Decision</u>
R2-7-B904.	<u>Appeals and Reports to the Director</u>
R2-7-B905.	<u>Controversies Involving State Claims Against the Contractor</u>

PART C. DEBARMENTS AND SUSPENSIONS

R2-7-C901.	<u>Authority to Debar or Suspend</u>
R2-7-C902.	<u>Initiation of Debarment</u>
R2-7-C903.	<u>Period of Debarment</u>
R2-7-C904.	<u>Notice of Debarment and Hearing</u>
R2-7-C905.	<u>Imputed Knowledge</u>
R2-7-C906.	<u>Reinstatement</u>
R2-7-C907.	<u>Limited Participation</u>
R2-7-C908.	<u>Suspension</u>
R2-7-C909.	<u>Period and Scope of Suspension</u>
R2-7-C910.	<u>Notice, Hearing, Determination, and Appeal</u>
R2-7-C911.	<u>Master List</u>

PART D. HEARING PROCEDURES

R2-7-D901.	<u>Hearings</u>
R2-7-D902.	<u>Rehearing of Director's Decision</u>

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT

Section	
R2-7-1001.	<u>Definition Approval to Enter into a Cooperative Purchasing Agreement</u>
R2-7-1002.	<u>Applicability Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer</u>
R2-7-1003.	<u>Intergovernmental Procurement Agreements Approval Establishment of a Committee as Required by A.R.S. § 41-2636</u>
R2-7-1004.	<u>Cooperative State Purchasing Agreement in Form of a State Requirements Contract Certification as Non-Profit Agency for Disabled Individuals</u>
R2-7-1005.	<u>Informational and Technical Services Application for Approval as Required by A.R.S. § 41-2636 to Become a</u>

Notices of Proposed Rulemaking

- R2-7-1006. Certified Non-Profit Agency for Disabled Individuals
~~Establishment of the Committee~~ Approval of Specific Materials and/or Services for Set-Aside Use
R2-7-1007. ~~Evaluation of Materials and Services~~ Contract Awards Directed by the Committee
R2-7-1008. ~~Contract Awards by the Committee~~ Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit
R2-7-1009. Procurement of Other AIB or ACI Materials or Services by State Governmental Units Set-Aside Application
Dispute Process
R2-7-1010. ~~Renumbered~~ Repealed

ARTICLE 13. ON-LINE BIDDING

Section

R2-7-1301. On-Line Solicitation Process

ARTICLE 1. GENERAL PROVISIONS

R2-7-101. ~~Written Determinations~~ Definitions

- ~~A. Each written determination shall specify the facts and law necessary to support the determination.~~
~~B. The State Procurement Administrator is authorized to prescribe methods and operational procedures to be used in preparing written determinations.~~
~~C. Each written determination shall be filed in the applicable solicitation or contract file.~~
In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the person within a purchasing agency, as identified by the state governmental agency head, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other procurement officer or person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. "Bid" means an offer in response to solicitation.
9. "Bidder" means "offeror" as defined in R2-7-101(34).
10. "Brand name or equal specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
11. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
12. "Clergy" means a minister of a religion.
13. "Competitive range" means the range determined on the basis of the criteria stated in the solicitation and shall include all offers that have a reasonable chance of being selected for award.
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of per-

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

- formance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-903 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Discussion" means "negotiation" as defined in R2-7-101(32).
24. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency for disabled individuals as defined in A.R.S. § 41-2631, that are eligible under a cooperative agreement to use Arizona state contracts.
25. "Enterprise Procurement Services" means state procurement office as defined in R2-7-101(50).
26. "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
27. "Finished goods" means units of a manufactured product awaiting sale.
28. "Force account", as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
29. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
30. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
31. "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
32. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
33. "May" means something is permissive.
34. "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
35. "Offer" means a response to a solicitation.
36. "Offeror" means a person that responds to a solicitation.
37. "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
38. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
39. "Procurement file" means the official records file of the director whether located in the office of the director or at a public procurement unit.
40. "Procurement request" means the document that initiates a procurement.
41. "Proposal" means an offer submitted in response to a solicitation.
42. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
43. "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
44. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through on-line bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
45. "Shall" means something is mandatory.
46. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than one hundred full time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
47. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
48. "Source selection method" means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
49. "State procurement administrator" means the individual appointed by the director as a chief procurement officer for a state, or a state procurement administrator's authorized designee. A different title may be used for this position.
50. "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.
51. "Suspension" means an action taken by the director under R2-7-903(H) that temporarily disqualifies a person from

participating in a state procurement process.

52. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

R2-7-102. Definitions Written Determinations

In this Chapter, unless the context otherwise requires:

1. "Arizona state contract" means a contract established by the Department through which state governmental units are required to purchase and other eligible procurement units may purchase.
 2. "Assistant Director for Facilities Planning and Construction" means the Assistant Director of the Department of Administration for Facilities Management.
 3. "Clergy" means a minister of a religion.
 4. "Days" mean calendar days and shall be computed pursuant to A.R.S. § 1-243.
 5. "Dentist" means a person licensed pursuant to A.R.S. Title 32, Chapter 11.
 6. "Finished goods" mean units of manufactured product awaiting sale.
 7. "Legal counsel" means a person licensed as an attorney pursuant to rules of the Supreme Court, A.R.S. Volume 17A.
 8. "May" denotes the permissive.
 9. "Physician" means a person licensed pursuant to Title 32, Chapter 13 or 17.
 10. "Purchase request" or "purchase requisition" means that document, or electronic transmission, whereby a using agency requests that a contract be entered into for a specific need and may include, but is not limited to, the description of the requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information supplied for the making of any written determination required by the Arizona Procurement Code or this Chapter.
 11. "Raw materials" mean goods, excluding equipment and machinery, purchased for use in manufacturing a product.
 12. "Shall" denotes the imperative.
 13. "State Procurement Administrator" means the person holding the position as the administrator of the State Procurement Office.
 14. "Trade secret" means a secret, commercially valuable plan, formula, process or device that is used for making, preparing, compounding or processing trade commodities and that can be said to be a product of either innovation or substantial effort.
- A.** If a written determination is required under applicable law, an agency chief procurement officer shall include the basis for the action taken in the written determination.
- B.** An agency chief procurement officer shall place the written determination into the purchasing agency's procurement file.
- C.** A procurement file located at a state agency is considered the official records file of the director as required by A.R.S. § 41-2502, if the file is maintained by an agency chief procurement officer.

R2-7-103. Time and Place of Market Price Confidential Information

If a price at the times or places described in this Chapter is not readily available, the price prevailing within any reasonable time before or after the time described or at any other place which in commercial judgment or under usage of trade would serve as a reasonable substitute for the one described may be used, making any proper allowance for the cost of transporting the goods to or from such other place.

- A.** If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B.** Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.
- C.** Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest.
 2. The designated information is not confidential; or
 3. Additional information is required before a final confidentiality determination can be made.
- D.** If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.
- E.** An agency chief procurement officer may release information designated as confidential under subsection (A) when:
1. A request for review is not received by the state procurement administrator within the time period specified in an

Notices of Proposed Rulemaking

notice; or

2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

R2-7-104. ~~Confidential Information Repealed~~

- ~~A. If a person believes that the person's bid, proposal, offer, specification, or protest submitted to the state contains trade secrets or other proprietary data that remain confidential under A.R.S. § 41-2533(D) or 41-2534(D), the person shall include with the submission a statement that explains and supports the person's claim that the submission contains such information. The person also shall stamp as confidential or otherwise specifically identify in the submission all trade secrets and other proprietary data that the person believes remain confidential.~~
- ~~B. The information identified by the person as confidential shall not be disclosed until the Director makes a written determination.~~
- ~~C. The procurement officer shall make an initial determination whether the information identified is confidential under A.R.S. § 41-2533(D) or 41-2534(D). If the procurement officer determines that the information is not confidential under A.R.S. § 41-2533(D) or 41-2534(D), the procurement officer shall refer the matter to the Director. The Director shall review the statement and information and shall determine in writing within a reasonable time whether the information is a trade secret or other proprietary data that shall remain confidential. If the Director determines that the information is a trade secret or other proprietary data that shall remain confidential, the information shall remain confidential.~~
- ~~D. If the Director determines to disclose the information, the Director shall inform the person in writing of such determination.~~

R2-7-105. ~~State Employee or Official Use of Contracts Prohibited Repealed~~

~~State employees and officials shall not be permitted to make purchases for personal or business use of any contract entered into by the state.~~

ARTICLE 2. PROCUREMENT ORGANIZATION

R2-7-201. ~~Delegation of Procurement Authority~~ State Procurement Administrator: Duties and Qualifications

- ~~A. The Director shall consider the following factors in making the decision to delegate procurement authority.~~
 - ~~1. The procurement expertise, specialized knowledge and past experience and performance of the state governmental unit;~~
 - ~~2. The impact of the delegation on procurement efficiency and effectiveness; and~~
 - ~~3. The abilities and resources of the Department to exercise the authority if it is not delegated.~~
- ~~B. Delegation shall be in writing and shall specify:~~
 - ~~1. The activity or function authorized;~~
 - ~~2. Any limits or restrictions on the exercise of the delegated authority;~~
 - ~~3. Whether the authority may be further delegated; and~~
 - ~~4. The duration of the delegation.~~
- ~~C. Authority delegated by the Director may be revoked or modified by the Director.~~
- ~~D. Any state governmental unit receiving a delegation of authority shall exercise that authority according to the Arizona Procurement Code, these rules and the terms of the delegation.~~
- A. The director shall hire a state procurement administrator with executive and organizational skills and relevant, recent experience in public procurement.
- B. The state procurement administrator shall:
 1. Administer the procurement of materials, services and construction needed by the state;
 2. Establish procurement policy and procedure;
 3. Establish procurement training standards;
 4. Designate if an Arizona state contract is mandatory;
 5. Delegate procurement authority under R2-7-202; and
 6. Monitor compliance of state governmental units with state procurement laws.
- C. The state procurement administrator shall maintain a record of each contract awarded under A.R.S. §§ 41-2536 (sole source procurement) and 41-2537 (emergency procurement) that exceeds the amount prescribed in A.R.S. § 41-2535(A). The record shall be maintained for a minimum of five years. The state procurement administrator shall ensure that the record is available for public inspection and contains all of the following:
 1. Each contractor's name;
 2. The estimated amount of each contract; and
 3. A description of the item or service procured.

R2-7-202. ~~Delegation of Authority for Procurements Not Exceeding an Aggregate Amount of \$5,000~~ Delegation of Procurement Authority to State Governmental Units

The State Procurement Administrator may delegate to any using agency the authority to make purchases pursuant to R2-7-336 and R2-7-337 if the purchase is estimated not to exceed an aggregate amount of \$10,000. Any delegation shall be in writing and may be limited as the State Procurement Administrator directs. Authority delegated by the State Procurement Administrator may be revoked or modified by the State Procurement Administrator.

- A.** The state procurement administrator shall delegate procurement authority to a state governmental unit based upon the following criteria:
1. The procurement expertise, knowledge, experience, and performance of the state governmental unit's agency chief procurement officer, as identified by the state governmental unit; and
 2. The impact of the delegation on procurement efficiency and effectiveness.
- B.** The state procurement administrator shall delegate procurement authority in a written document that specifies all of the following:
1. The agency chief procurement officer.
 2. The specific authority delegated.
 3. Any limits or restrictions upon the delegated authority.
 4. Whether the authority may be further delegated, and
 5. The duration of the delegation.
- C.** The head of a purchasing agency shall immediately report any significant change regarding the criteria considered under subsection (A) to the state procurement administrator.
- D.** A purchasing agency shall exercise delegated authority according to A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.
- E.** An agency chief procurement officer shall submit to the state procurement administrator any procurement that exceeds the agency's delegated authority.
- F.** The state procurement administrator may revoke, suspend or modify delegated authority for failure to comply with A.R.S. Title 41, Chapter 23 or A.A.C. Title 2, Chapter 7, or a significant change regarding the criteria considered under subsection (A).
- G.** The state procurement administrator retains all authorities and duties delegated to an agency chief procurement officer at a state governmental unit.

R2-7-203. ~~Procurement Advisory Groups~~ Agency Chief Procurement Officer

- A.** A procurement advisory group member who participates in any aspect of a specific procurement as an advisory group member shall be prohibited from receiving any benefits directly or indirectly from a contract for such procurement.
- B.** Specifications prepared by a procurement advisory group shall comply with Article 4 of the Arizona Procurement Code.
- C.** The Director shall not delegate to a procurement advisory group, or a non-state employee member thereof, the authority for the award or administration of any particular contract, or any dispute, claim, or litigation pertaining thereto.
- A.** An agency chief procurement officer may further delegate procurement authority within the purchasing agency, within the limits specified by the state procurement administrator.
- B.** The agency chief procurement officer shall notify the state procurement administrator in writing of employees who have delegated procurement authority.

R2-7-204. State Employee or Public Officer Use of State Contracts

State employees and public officers shall not purchase materials or services for their own personal or business use from contracts entered into by the state unless authorized in writing by the director. The determination shall state how the purchase will further the interests of the state.

R2-7-205. Procurement Requests by Purchasing Agencies

If a purchasing agency determines that a procurement is necessary, the purchasing agency shall submit a procurement request, in writing, to the procurement officer. The procurement request shall be submitted in a manner expressly approved by the agency chief procurement officer.

R2-7-206. Authorized Procurement Officers

A procurement officer shall perform all procurement duties in accordance with the Arizona Procurement Code and within the authority delegated to the procurement officer in accordance with this Chapter.

R2-7-207. Resolution of Intra-agency Procurement Disputes

Procurement disputes between a purchasing agency and its agency chief procurement officer shall be resolved by the state procurement administrator.

R2-7-208. Authorization of Electronic Transactions

- A.** An electronic media transaction, involving an electronic record or electronic signature, is authorized if the transaction is

Notices of Proposed Rulemaking

consistent with state law.

- B.** The state procurement administrator may limit the use of electronic transactions, based on consideration of the best interest of the state.

R2-7-209. Prospective Suppliers List

- A.** The state procurement administrator shall compile and maintain a prospective supplier's list. To be included on the prospective supplier's list, a person shall register with the state procurement office.
- B.** The state procurement administrator may remove suppliers from the prospective supplier's list if a notice sent to the supplier is returned. The state procurement administrator shall maintain a record of the date and reason for removal of a supplier from the prospective supplier's list.

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

R2-7-301. Definitions Repealed

In this Article, unless the context otherwise requires:

1. "Bid sample" means an item furnished by a bidder to show the characteristics of the item offered in the bid.
2. "Capability" means capability at the time of contract award.
3. "Clarification" means written or oral communication with a bidder or offeror, including demonstrations or questions and answers, for the sole purpose of information gathering or of eliminating minor informalities or correcting non-judgmental mistakes in a bid or proposal. Clarification does not otherwise afford the bidder or offeror the opportunity to alter or change its bid or proposal.
4. "Cost analysis" means the evaluation of cost data.
5. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been actually incurred or that are expected to be incurred by the contractor in performing the contract.
6. "Cost plus a percentage of cost contract" means a contract that, prior to completion of the work, the parties agree that the fee will be a predetermined percentage of the total cost of the work.
7. "Defective data" means data that is inaccurate, incomplete or non-current.
8. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item offered in a bid or proposal.
9. "Discussions" means oral or written negotiations between the state and an offeror during which information is exchanged about specifications, scope of work, terms and conditions and price set forth in the initial proposal. Communication with an offeror for the sole purpose of clarifications does not constitute "discussions".
10. "Incremental award" means an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required.
11. "Minor informality" means mistakes, excluding judgmental errors, that have negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
12. "Multiple award" means an award of separate contracts for an indefinite quantity for one or more similar materials or services to more than one bidder or offeror.
13. "Price analysis" means the evaluation of price data.
14. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to those being procured under a contract or subcontract. In this definition, "prices" refers to offered or proposed selling prices, historical selling prices, or current selling prices of the items being purchased.
15. "Regional award" means the division of a contract for one or more similar materials or services into geographic regions.
16. "Small business" means a concern defined in A.R.S. § 41-1001(14).
17. "Solicitation" means an Invitation for Bids, a Request for Technical Offers, a Request for Proposals, a Request for Quotations, or any other invitation or request by which the state invites a person to participate in a procurement.
18. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work and its qualifications.

R2-7-302. General Provisions Repealed

- A.** A procurement officer shall neither award a contract nor incur an obligation on behalf of the state unless sufficient funds are available for the specific procurement.
- B.** Any bid or proposal that is conditioned upon award to the bidder or offeror of both the particular contract being solicited and another state contract shall be deemed nonresponsive or unacceptable.

R2-7-303. Extension of Offer Acceptance Time Repealed

After opening of bids or proposals, the procurement officer may request bidders or offerors who have submitted timely bids or

proposals to extend, in writing, the time during which the state may accept their bids or proposals. It is not necessary to receive a written concurrence from all bidders or offerors to award a contract. A written concurrence is required from those bidders or offerors who are to be awarded a contract and that concurrence must be received by the procurement officer before the original bid or proposal expires.

R2-7-304. Purchase Requests Repealed

- A.** If a state governmental unit determines the need for a material or service, it shall prepare a purchase request.
- B.** Upon receipt of a purchase request from a state governmental unit, a procurement officer is authorized to determine the form and manner in which the procurement shall be solicited, except as otherwise provided in this Chapter.
- C.** The procurement officer shall reject the purchase request, if after consultation with the requesting state governmental unit, the procurement officer determines that it is not advantageous to the state. The determination shall state the reasons for the rejection and shall accompany the returned purchase request.
- D.** Disagreements between a using agency and the State Purchasing Administrator concerning actions taken under subsection (B) or (C) of this rule, shall be brought to the Director for resolution. Disagreements between a purchasing agency and its procurement officer shall be resolved in accordance with the agency's delegation of authority.

R2-7-305. Assignment of Rights and Duties Repealed

The rights and duties of a state contract are not transferable or otherwise assignable without the written consent of the procurement officer.

R2-7-306. Change of Name Repealed

- A.** If a contractor requests to change the name in which it holds a state contract, the procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.
- B.** All change of name amendments shall be reported to the State Procurement Administrator before the date that the amendment becomes effective.

R2-7-307. Installment Purchases Repealed

Installment purchases may be used when advantageous to the state. If an installment purchase is used, provisions for installment purchase payments shall be included in the solicitation document.

R2-7-308. Multiple source Contracting Repealed

- A.** If the procurement officer anticipates that any of the awards described in subsections (B) through (D) of this rule will be made, the solicitation shall include a notification of the right of the state to make such an award and the criteria upon which such an award will be based.
- B.** An incremental award may be made only if the procurement officer determines in writing that such an award is necessary to obtain the required quantity or delivery.
- C.** A multiple award shall be made only if the procurement officer determines in writing that a single award is not advantageous to the state. A multiple award shall be limited to the least number of suppliers necessary to meet the requirements of the using agencies.
- D.** A regional award may be made only if material or service is required to widely scattered locations or a particular requirement is of a local nature.

R2-7-309. Purchase of Items Separately from Construction Contract Repealed

The determination whether materials shall be procured as part of or separate from construction contract shall only be made by the State Procurement Administrator and Assistant Director for Facilities Management.

R2-7-310. Contract Change Orders and Amendments Repealed

Any contract change order or amendment that exceeds \$100,000, or a contract change order or amendment of \$100,000 or less that exceeds \$10,000 or 10% of the contract amount, whichever is greater, may be executed only if the State Procurement Administrator or, in the case of construction, Assistant Director for Facilities Management determines in writing that the change order or amendment is advantageous to the state. This rule shall not apply to the extension of a contract the price of which was competed and evaluated under the contractor's original bid or proposal.

R2-7-311. Arizona State Contracts Repealed

- A.** State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered by such contracts.
- B.** If a state governmental unit believes that a particular Arizona state contract does not satisfy its needs, the state governmental unit may not otherwise purchase the material or service without the written approval from the State Procurement Administrator. A copy of the approval shall be filed in the corresponding purchase order file maintained by the state governmental unit.

Notices of Proposed Rulemaking

R2-7-312. Prospective Vendors Lists Repealed

- A.** The State Procurement Administrator shall compile and maintain a prospective vendors list. Inclusion of the name of a person shall not indicate whether the person is responsible concerning a particular procurement or otherwise capable of successfully performing a state contract.
- B.** Persons desiring to be included on the prospective vendors list shall notify the State Procurement Administrator. Upon notification, the State Procurement Administrator shall mail or otherwise provide the person with a vendor registration form. The person shall complete the vendor registration form and return it to the State Procurement Office. Within five days after receiving the vendor registration form, the State Procurement Administrator shall add the person to the prospective vendors list unless the State Procurement Administrator makes a written determination that inclusion is not advantageous to the state.
- C.** Persons that fail to respond to solicitations for two consecutive procurements of similar items may be removed from the applicable vendors list after mailing a notice to the business. Persons may be reinstated upon written request.

R2-7-313. Invitation for Bids Repealed

- A.** In all competitive sealed bidding procurements, the purchasing agency shall issue an Invitation for Bids on a form approved by the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management. Invitation for Bids shall be issued at least 14 days before the time and date set for bid opening in the Invitation for Bids unless a shorter time is deemed necessary for a particular procurement as determined in writing by the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management.
- B.** Content
1. The Invitation for Bids shall include the following:
 - a. Instructions and information to bidders concerning the bid submission requirements, including the time and date set for bid opening, the address of the office to which bids are to be received, the period that the bid shall remain open, and any other special information;
 - b. The purchase description, specifications, evaluation criteria, delivery or performance schedule, and inspection and acceptance requirements; and
 - c. The contract terms and conditions, including warranty and bonding or other security requirements, as applicable.
 2. If the Invitation for Bids incorporates documents by reference, the Invitation for Bids shall specify where such documents may be obtained.
 3. The Invitation for Bids shall require the acknowledgement by the bidder of the receipt of any amendments issued.
 4. An Invitation for Bids may require the submission of bid samples, descriptive literature, technical data and may require inspection or testing of a product before award.
- C.** The purchasing agency shall mail or otherwise furnish Invitations for Bids or Notices of the Availability of Invitation for Bids to all prospective vendors registered at the State Procurement Office for the specific material, service or construction being bid.
- D.** A copy of the Invitation for Bids shall be made available for public inspection at the procurement officer's office.

R2-7-314. Pre-bid Conferences Repealed

A procurement officer may conduct a pre-bid conference within a reasonable time but not less than seven days before the bid opening to explain the procurement requirements. Statements made at the pre-bid conference shall not be considered amendments to the invitation for bids unless a written amendment is issued pursuant to R2-7-315.

R2-7-315. Amendments to Invitations for Bids Repealed

- A.** An amendment to an Invitation for Bids shall be issued if necessary to:
1. Make changes in the Invitation for Bids;
 2. Correct defects or ambiguities; or
 3. Furnish to other bidders information given to one bidder if the information will assist the other bidders in submitting bids or if the lack of the information will prejudice the other bidders.
- B.** Amendments to Invitations for Bids shall be so identified and shall be sent to all persons to whom the procurement officer distributed an Invitation for Bids.
- C.** Amendments shall require that the bidder acknowledge receipt of the amendment by signing and returning the amendment with the bid or before the time and date set for opening.
- D.** Amendments shall be issued within a reasonable time before bid opening to allow prospective bidders to consider them in preparing their bids. If the time and date set for bid opening does not permit sufficient time for bid preparation, the time and date for bid opening shall be extended in the amendment or, if necessary, by telegram or telephone and confirmed in the amendment.

R2-7-316. Pre-opening Modification or Withdrawal of Bids Repealed

- A.** A bidder may modify or withdraw its bid at any time before bid opening if the modification or withdrawal is received in writing before the time and date set for bid opening in the location designated in the Invitation for Bids for receipt of bids.

Notices of Proposed Rulemaking

A bidder or the bidder's authorized representative may withdraw the bid in person if, before the time and date set for bid opening, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

- B.** All documents concerning a modification or withdrawal of a bid shall be retained in the appropriate procurement file.

R2-7-317. Late Bids, Late Withdrawals, and Late Modifications Repealed

- A.** A bid, modification or withdrawal is late if it is received at the location designated in the Invitation for Bids for receipt of bids after the time and date set for bid opening.
- B.** A late bid, late modification, or late withdrawal shall be rejected unless the bid, modification, or withdrawal is received before contract award at the location designated in the Invitation for Bids for receipt of bids and would have been timely received but for the action or inaction of state personnel directly serving the purchasing agency.
- C.** Bidders submitting bids, modifications or withdrawals that are rejected as late shall be so notified as soon as practicable.
- D.** Documentation concerning a late bid, late modification, or late withdrawal shall be retained in the appropriate procurement file.

R2-7-318. Receipt, Opening, and Recording of Bids Repealed

- A.** Except as provided in subsection (B) of this rule, each bid and modification shall be time-stamped upon receipt and stored unopened in a secure place until the time and date set for bid opening.
- B.** An envelope that is not marked as a bid or does not identify the bidder or solicitation may be opened solely for the purpose of identification. Record shall be made on the envelope of the reason for opening it, the date and time it was opened, the solicitation to which the bid responded, and the signature of the person who opened the envelope. The envelope shall be resealed and retained in the procurement file.
- C.** Bids and modifications shall be opened publicly in the sequence that they were received and in the presence of one or more witnesses at the time, date, and location designated in the Invitation for Bids for bid opening. The name of each bidder, the bid price, and other information deemed appropriate by the procurement officer shall be read aloud and recorded on a bid abstract. The name of the required witness shall also be recorded. The bid abstract shall be available for public inspection.
- D.** Bids shall not be available for public inspection before contract award pursuant to A.R.S. § 41-2533(D). After contract award, the bids shall be available for public inspection, except to the extent that the withholding of information is permitted or required by law. If the bidder designates a portion of its bid as confidential, it shall isolate and identify in writing the confidential portions in accordance with R2-7-104.

R2-7-319. Mistakes in Bids Repealed

- A.** A bidder may correct mistakes discovered before the time and date set for bid opening by withdrawing or correcting the bid as provided in R2-7-316.
- B.** After bid opening, a bid mistake based on an error in judgment may not be corrected or withdrawn. Other bid mistakes may be corrected or withdrawn pursuant to subsections (C) through (E) of this rule.
- C.** After bid opening, the procurement officer shall either waive minor informalities in a bid or allow the bidder to correct them if correction is advantageous to the state.
- D.** After bid opening, the bid may not be withdrawn and shall be corrected to the intended bid if a bid mistake and the intended bid are evident on the face of the bid.
- E.** After bid opening, the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management may permit a bidder to withdraw a bid if:
1. A nonjudgmental mistake is evident on the face of the bid but the intended bid is not evident; or
 2. The bidder establishes by clear and convincing evidence that a nonjudgmental mistake was made.
- F.** Mistakes shall not be corrected after award of the contract except where the State Procurement Administrator or Assistant Director for Facilities Management makes a written determination that it would be unconscionable not to allow the mistake to be corrected.
- G.** If correction or withdrawal of a bid after bid opening is permitted or denied under subsections (D) and (E) of this rule, the State Procurement Administrator or, in the case of construction, the Assistant Director for Facilities Management shall prepare a written determination showing that the relief was permitted or denied under these rules and regulations.

R2-7-320. Bid Evaluation and Award Repealed

- A.** The contract shall be awarded to the lowest responsible and responsive bidder whose bid meets the requirements and evaluation criteria set forth in the Invitation for Bids. Unless otherwise provided in the Invitation for Bids, award may be made by individual line item, by group of line items, or for the aggregate total of all line items.
- B.** A product acceptability evaluation may be conducted to determine whether a bidder's product is acceptable as set forth in the Invitation for Bids but not to determine whether one bidder's product is superior to another bidder's product. Any bidder's offering that does not meet the acceptability requirements shall be rejected as nonresponsive.
- C.** Bids shall be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria that are set forth in the Invitation for Bids

Notices of Proposed Rulemaking

shall be applied in determining the lowest bidder. Examples of such criteria include, but are not limited to, transportation cost, energy cost, ownership cost, and other identifiable costs or life cycle cost formulae. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible the evaluation factors shall be reasonable estimates based upon information the procurement officer has available concerning future use.

- D.** A contract may not be awarded to a bidder submitting a higher quality item than that designated in the Invitation for Bids unless the bidder is also the lowest bidder as determined under subsection (C) of this rule. The procurement officer may seek clarification of a bid but this rule does not permit discussions with any bidder.
- E.** If there are two or more low responsive bids from responsible bidders that are identical in price and that meet all the requirements and criteria set forth in the Invitation for Bids, award shall be made by drawing lots. If time permits, the bidders involved shall be given an opportunity to attend the drawing. The drawing shall be witnessed by at least one person other than the procurement officer supervising the drawing.
- F.** A record showing the basis for determining the successful bidder shall be retained in the procurement file.
- G.** A written notice of award shall be sent to the successful bidder. In procurements over \$100,000, each unsuccessful bidder shall be notified of the award. Notice of award shall be made available to the public.

R2-7-321. Only One Bid Received Repealed

If only one responsive bid is received in response to an Invitation for Bids, an award may be made to the single bidder if the procurement officer determines in writing that the price submitted is fair and reasonable, and that either other prospective bidders had reasonable opportunity to respond, or there is not adequate time for resolicitation. Otherwise the bid may be rejected pursuant to the provisions of A.R.S. § 41-2539 and:

- 1. New bids may be solicited; or
- 2. The proposed procurement may be cancelled; or
- 3. If the procurement officer determines in writing that the need for the material or service continues and the acceptance of the one bid is not advantageous to the state, the procurement may then be conducted under A.R.S. §§ 41-2536 or 41-2537 as appropriate.

R2-7-322. Multi-step Sealed Bidding Repealed

- A.** The multi-step sealed bidding method may be used if the procurement officer determines in writing that:
 - 1. Available specifications or purchase descriptions are not sufficiently complete to permit full competition without technical evaluations and discussions to ensure mutual understanding between each bidder and the state;
 - 2. Definite criteria exist for evaluation of technical offers;
 - 3. More than one technically qualified source is expected to be available; and
 - 4. A fixed-price contract will be used.
- B.** The procurement officer may hold a conference with bidders before submission or at any time during the evaluation of the unpriced technical offers.

R2-7-323. Phase One of Multi-step Sealed Bidding Repealed

- A.** Multi-step sealed bidding shall be initiated by the issuance of an Invitation to Submit Technical Offers. The Invitation to Submit Technical Offers shall be issued according to R2-7-313 and shall contain the following information:
 - 1. Notice that the procurement shall be conducted in two phases and that priced bids will be considered only in the second phase and only from those offerors whose unpriced technical offers are found acceptable in the first phase;
 - 2. The best description of the material or services desired;
 - 3. The requirements for the technical offers, such as drawings and descriptive literature;
 - 4. The criteria for evaluating technical offers;
 - 5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
 - 6. A statement that discussions may be held.
- B.** The Invitation to Submit Technical Offers may be amended after the submission of the unpriced technical offers. The amendment shall be distributed only to bidders who submitted unpriced technical offers, and those bidders shall be permitted to submit new unpriced technical offers or to amend the offers already submitted. If an amendment materially changes the procurement, the Invitation to Submit Technical Offers shall be cancelled in accordance with A.R.S. § 41-2539.
- C.** Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical proposals shall not be considered except under the circumstances set forth in R2-7-317(B). The contents of unpriced technical offers shall not be disclosed to unauthorized persons.
- D.** Unpriced technical offers shall be evaluated solely in accordance with the criteria set forth in the Invitation to Submit Technical Offers and shall be determined to be either acceptable or potentially acceptable for further consideration or unacceptable. A determination that an unpriced technical proposal is unacceptable shall be in writing, state the basis of the determination and be retained in the procurement file. If the procurement officer determines a bidder's unpriced technical offer is unacceptable, the procurement officer shall notify that bidder of the determination and that the bidder shall not be

afforded an opportunity to amend its technical offer.

- ~~E.~~ The procurement officer may conduct discussions with any bidder who submits an acceptable or potentially acceptable technical offer. During discussions, the procurement officer shall not disclose any information derived from one unpriced technical offer to any other bidder. After discussions, the procurement officer shall establish a closing date for receipt of final technical offers and shall notify in writing bidders submitting acceptable or potentially acceptable offers of the closing date. The procurement officer shall keep a record of all discussions.
- ~~F.~~ After receipt of final technical offers, the procurement officer shall determine whether the technical offers are acceptable for consideration in phase two or unacceptable.
- ~~G.~~ At any time during phase one, offers may be withdrawn.

R2-7-324. Phase Two of Multi-step Sealed Bidding Repealed

- ~~A.~~ Upon completion of phase one, the procurement officer shall issue an Invitation for Bids and conduct Phase Two under R2-7-313 through R2-7-320 as a competitive sealed bidding procurement, except that the Invitation for Bids shall be issued only to bidders whose technical offers were determined to be acceptable in phase one.
- ~~B.~~ Unpriced technical offers of unsuccessful bidders shall be open to public inspection except to the extent set forth in R2-7-318.

R2-7-325. Competitive Sealed Proposals Repealed

- ~~A.~~ The State Procurement Administrator shall determine in writing that competitive sealed bidding is either not practicable or not advantageous to the state. The State Procurement Administrator may make a class determination that it is either not practicable or not advantageous to the state to procure specified types of materials or services by competitive sealed bidding. The State Procurement Administrator may modify or revoke a class determination at any time.
- ~~B.~~ Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
 - 1. Use a contract other than a fixed-price type; or
 - 2. Conduct oral or written discussions with offerors concerning technical and price aspects of their proposals; or
 - 3. Afford offerors an opportunity to revise their proposals; or
 - 4. Compare the different price, quality, and contractual factors of the proposals submitted; or
 - 5. Award a contract in which price is not the determining factor.

R2-7-326. Request for Proposals Repealed

- ~~A.~~ A Request for Proposals shall set forth those factors listed in R2-7-313(B) that are applicable and shall also state:
 - 1. The type of materials or services required and a description of the work involved;
 - 2. The type of contract to be used;
 - 3. Whether cost or pricing data is required;
 - 4. That offerors may designate as trade secrets or proprietary data portions of the proposals;
 - 5. That discussions may be conducted with offerors who submit proposals determined to be reasonably susceptible of being selected for award;
 - 6. The minimum information that the proposal shall contain; and
 - 7. The closing date and time for receipt of proposals.
- ~~B.~~ A Request for Proposals shall be issued at least 14 days before the closing date and time for receipt of proposals unless a shorter time is determined necessary in writing by the State Procurement Administrator.
- ~~C.~~ Request for Proposal forms shall be approved by the State Procurement Administrator.
- ~~D.~~ Notice of the Request for Proposals shall be issued in accordance with R2-7-313.
- ~~E.~~ Vendors lists compiled and maintained in accordance with R2-7-312 shall serve as a basis for soliciting competitive sealed proposals.
- ~~F.~~ Before submission of initial proposals, amendments to Requests for Proposals shall be made in accordance with R2-7-315. After submission of proposals, amendments may be made in accordance with R2-7-323(B).

R2-7-327. Pre-proposal Conferences Repealed

~~Pre-proposal conferences may be convened in accordance with R2-7-314.~~

R2-7-328. Late Proposals, Late Modifications or Late Withdrawals Repealed

- ~~A.~~ A proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-7-317(B). A best and final offer received after the closing date and time for receipt of best and final offers is late and shall not be considered except under the circumstances set forth in R2-7-317(B).
- ~~B.~~ A modification of a proposal received after the closing date and time for receipt of proposals is late and shall not be considered except under the circumstances set forth in R2-7-317(B).
- ~~C.~~ A modification of a proposal resulting from an amendment issued after the closing date and time for receipt of proposals or a modification of a proposal resulting from discussions during negotiations shall be considered if received by the closing date and time set forth in the amendment or by the closing date and time for submission of best and final offers, whichever is applicable. If the modifications described in this subsection are received after the respective date and time

Notices of Proposed Rulemaking

described in this subsection, the modifications are late and shall not be considered except under the circumstances set forth in R2-7-317(D).

- ~~D.~~ A proposal may be withdrawn at any time before the closing date and time for receipt of best and final offers. Withdrawal of a proposal after submission of best and final offers is permissible only in accordance with R2-7-333.

R2-7-329. Receipt of Proposals Repealed

- ~~A.~~ Each proposal received shall be date and time stamped and retained in a secure place until the closing date and time for receipt of proposals. A Register of Proposals shall be prepared and shall set forth the name of each offeror and the identity of the Request for Proposals for which the proposal was submitted.
- ~~B.~~ Proposals shall be opened in the presence of witnesses. The name of each offeror shall be publicly read and recorded. Before contract award, proposals and modifications shall be shown only to state personnel having a legitimate interest in them or persons assisting the state in evaluation.
- ~~C.~~ If only one proposal is received in response to a Request for Proposals, the procurement officer may either make an award in accordance with R2-7-334 or, if time permits, resolicit.

R2-7-330. Evaluation of Proposals Repealed

- ~~A.~~ Evaluation of the proposals shall be based on the evaluation factors set forth in the Request for Proposals.
- ~~B.~~ For the purpose of conducting discussions, the procurement officer shall determine, in accordance with subsection (A) of this rule, that proposals are either reasonably susceptible of being selected for award or unacceptable. A determination that a proposal is unacceptable shall be in writing, state the basis of the determination, and be retained in the procurement file. If the procurement officer determines that an offeror's proposal is not reasonably susceptible of being selected for award, the procurement officer shall notify that offeror of the determination and that the offeror shall not be afforded an opportunity to modify its offer.

R2-7-331. Discussions with Individual Offerors Repealed

The procurement officer shall establish procedures and schedules for conducting discussions. Disclosure of one offeror's price to another and any information derived from competing proposals is prohibited. The procurement officer shall keep a record of all discussions in a manner prescribed by the State Procurement Administrator.

R2-7-332. Best and Final Offers Repealed

If discussions are conducted pursuant to R2-7-331, the procurement officer shall issue a written request for best and final offers. The request shall set forth the date, time and place for the submission of best and final offers. Best and final offers shall be requested only once, unless the State Procurement Administrator makes a written determination that it is advantageous to the state to conduct further discussions or change the state's requirements. The request for best and final offers shall inform offerors that, if they do not submit a notice of withdrawal or a best and final offer, their immediate previous offer will be construed as their best and final offer.

R2-7-333. Mistakes in Proposals Repealed

- ~~A.~~ Prior to the time and date set for receipt of best and final offers, any offeror with whom discussions have been held may withdraw the proposal or correct any mistake by modifying the proposal.
- ~~B.~~ After receipt of best and final offers, an offeror may withdraw a proposal or correct a mistake in accordance with R2-7-319(B) through (G).

R2-7-334. Contract Award Repealed

- ~~A.~~ The procurement officer shall award a contract to the offeror whose proposal is determined in writing to be most advantageous to the state based on the factors set forth in the Request for Proposals. The determination shall explain the basis of the award.
- ~~B.~~ If the contract awarded exceeds \$100,000, each unsuccessful offeror shall be notified in writing of the award.
- ~~C.~~ After contract award the proposals shall be open for public inspection except to the extent that the withholding of information is permitted or required by law. If the offeror designates a portion of its proposal as confidential, it shall isolate and identify in writing the confidential portions in accordance with R2-7-104.

R2-7-335. Small Business Set aside Repealed

- ~~A.~~ When practical and except as provided under subsection (D) of this rule, purchases estimated to cost less than \$10,000 shall be restricted to small businesses in accordance with the procedures set forth in subsections (B) and (C) of this rule. Purchases shall be conducted in accordance with R2-7-336.
- ~~B.~~ If a request for quotations is issued for the purchase, it shall contain a notice that only small businesses as defined in these rules may respond. Any request for quotations that requires written quotes shall request bidders to self certify in their quotes that they are a small business. If verbal quotes are accepted in response to a written request for quotations or if the bidder fails to certify in a written quote that it is a small business, the procurement officer shall confirm before awarding a contract that the intended awardee is a small business. A bidder shall be presumed to be a small business if it has registered on the state's prospective vendors list as a small business. The procurement officer shall make a written notation in

Notices of Proposed Rulemaking

the contract file of that confirmation.

- ~~C.~~ If a request for quotation is not issued, the procurement officer shall verbally request confirmation that the bidder contacted to offer a quote is a small business. The procurement officer shall confirm before awarding a contract for a purchase that the intended awardee is a small business and shall make a written notation in the contract file of that confirmation.
- ~~D.~~ It is declared to be impractical for the procurement officer to determine a bidder's status as a small business under the following circumstances:
 - 1. Sole source procurements as defined in A.R.S. § 41-2536;
 - 2. Emergency procurements as defined in A.R.S. § 41-2537;
 - 3. Purchases not expected to exceed \$1,000;
 - 4. Purchases delegated within a purchasing agency to field offices; and
 - 5. Purchases that have been unsuccessfully competed under subsections (B) and (C) of this rule, including failure to obtain fair and reasonable prices.

R2-7-336. Procurements Not Exceeding an Aggregate Amount of \$25,000 Repealed

- ~~A.~~ Purchases estimated to cost from \$10,000 to \$25,000 shall be made in accordance with the following procedures:
 - 1. Purchasing agencies that are not authorized by the state procurement administrator to utilize the state procurement office's electronic notification/distribution system shall either conduct purchases according to A.R.S. §§ 41-2533 or 41-2534 for purchases estimated to cost from \$10,000 to \$25,000 or request that the state procurement office conduct the procurement for them
 - 2. If practical, purchasing agencies authorized by the state procurement administrator to utilize the electronic notification/distribution system shall conduct purchases estimated to cost from \$10,000 to \$25,000 in accordance with the procedures set forth in subsections (A)(3) through (10) of this rule.
 - 3. The procurement officer shall issue a request for quotations. The request for quotations shall be transmitted to the state procurement office's electronic notification/distribution system.
 - 4. Requests for quotations on the electronic notification/distribution system shall be retained on that system for a period of not less than 11 days as defined in R2-7-102(5) and computed pursuant to A.R.S. § 1-243.
 - 5. Bidders shall submit quotes on a form approved by the state procurement administrator and the quotes shall be recorded and placed in the procurement file.
 - 6. Award shall be made to the responsible bidder submitting the quotation which is most advantageous to the state and conforms to the solicitation.
 - 7. If only one responsive quotation is received, a statement shall be included in the contract file setting forth the basis for determining that the price is fair and reasonable. This determination may be based on a comparison of the proposed price with prices found reasonable on previous purchases or current price lists.
 - 8. If the procurement officer determines that it is not practical to utilize the procedures set forth in subsections (A)(3) through (6) of this rule, the procurement officer shall document in writing the reasons that compliance with those procedures is impractical. A procurement officer who determines that it is impractical to comply with subsection (A)(3) shall follow the procedures set forth in subsection (B) of this rule. A procurement officer who determines that it is impractical to comply with subsection (A)(4) shall transmit the request for quotations to the electronic notification/distribution system and retain it on that system for a number of days reasonable under the circumstances.
 - 9. The procurement officer may determine that an emergency exists under A.R.S. § 41-2537 as the basis for not placing the purchase on the electronic notification/distribution system. The procurement officer shall report the emergency procurement in writing to the state procurement office within two days of making the determination that an emergency existed.
 - 10. Any sole source procurement under A.R.S. § 41-2536 shall be approved in advance by the state procurement office.
 - 11. Purchases estimated to cost less than \$10,000 may be placed on the electronic notification/distribution system by purchasing agencies that are connected to the system.
 - 12. Solicitation notices of the availability of solicitations issued pursuant to R2-7-313(C) and R2-7-326(D) for purchases that exceed \$25,000 may be placed on the electronic notification/distribution system and sent to those registered vendors capable of receiving them electronically.
- ~~B.~~ If practical, purchases estimated to cost from \$5,001 to \$9,999 shall be made in accordance with the following procedures:
 - 1. If applicable under R2-7-335, bidders shall be limited to small businesses.
 - 2. At least three bidders shall be solicited to submit written quotations.
 - 3. The procurement officer shall issue a Request for Quotations to a reasonable number of vendors. The Request for Quotation need not be sent to all vendors on the vendors list but shall be sent to any vendor who specifically requests the Request for Quotation. Vendors solicited shall be rotated to the extent necessary to give all vendors a fair and equal opportunity to compete.
 - 4. The procurement officer shall issue the request for quotation a reasonable time as determined under the circumstances of each case by the procurement officer.
 - 5. Quotes shall be submitted in accordance with subsection (A)(5) of this rule. Award shall be made in accordance with

Notices of Proposed Rulemaking

subsection (A)(6) or, where applicable, subsection (A)(7) of this rule.

- C. If practical, purchases estimated to cost from \$1,001 to \$5,000 shall be made in accordance with the following procedures:
 - 1. If applicable under R2-7-335, bidders shall be limited to small businesses.
 - 2. At least three bidders shall be solicited to submit verbal or written quotations.
 - 3. Quotations need not be solicited from all vendors on the vendors list but shall be solicited from any vendor who specifically requests to submit a quotation. Vendors solicited shall be rotated to the extent necessary to give all vendors a fair and equal opportunity to compete.
 - 4. Procurements made under this rule shall also comply with R2-7-336(A)(4) and (5).
 - 5. Quotations shall be recorded and a record sufficient to facilitate auditing of the purchasing agency shall be placed in the procurement file.
- D. For purchases of \$1,000 or less, purchasing agencies shall utilize procedures providing for adequate and reasonable competition and for making records to facilitate auditing of the purchasing agency.
- E. For purposes of a multi-term contract, the total amount of the contract over the full term, including the amounts of any options to extend, will determine whether it is subject to this Section.

R2-7-337. Other Procurements Not Exceeding an Aggregate Amount of \$10,000 Repealed

- A. If material, service or construction is available from only one vendor, and the purchase is estimated to cost less than \$10,000, the sole source procurement method set forth in A.R.S. § 41-2536 shall be used, except that head of the purchasing agency or the State Procurement Administrator may make the determination that the sole source method is appropriate. This subsection does not apply to procurements described in R2-7-336(C).
- B. If purchases of services specified in A.R.S. §§ 41-2513 and 41-2578 are estimated to cost less than \$10,000, the methods specified in this rule may be used in lieu of the procedure specified in A.R.S. §§ 41-2538 and 41-2578.

R2-7-338. Sole Source Procurement Repealed

- A. A using agency seeking a sole source procurement shall prepare a written request documenting the existence of a sole source condition, including the specific efforts made to determine the availability of any other source. The request shall include an explanation of the procurement need. The request shall be signed by a designated official of the using agency at the assistant director level, its equivalent or above.
- B. Except as provided in R2-7-337(A), a sole source procurement may be conducted only if the Director determines in writing before the initiation of the procurement that a sole source procurement is required. Sole source procurement shall not be used unless there is clear and convincing evidence that there is only one source for the required material or service and that no other type of material or service will satisfy the requirements of the using agency. The using agency requesting sole source procurement shall provide written evidence to support a sole source determination.
- C. The procurement officer shall negotiate with the single supplier, to the extent practicable, a contract advantageous to the state. The procurement officer shall use the state's terms and conditions as the contract document unless the procurement officer receives an exemption from the State Procurement Administrator.
- D. The provisions of this rule apply to all sole source procurements unless emergency conditions exist as defined in A.R.S. § 41-2537.

R2-7-339. Emergency Procurements Repealed

- A. An emergency condition may arise from, but is not limited to, floods, epidemics, riots, or equipment failures. An emergency condition creates an immediate and serious need for materials, services, or construction that cannot be met through normal procurement methods and that seriously threatens the functioning of state government, the preservation or protection of property or the health or safety of any person.
- B. An emergency procurement shall be limited to those materials, services, or construction necessary to satisfy the emergency need.

R2-7-340. Emergency Procurement Procedure Repealed

- A. A using agency seeking an emergency procurement shall prepare a written request documenting the existence of an emergency condition and explaining the procurement need. The request shall be signed by a designated official of the using agency at the assistant director level, its equivalent or above.
- B. The request shall be submitted to the Assistant Director for Finance, with a copy to the State Procurement Administrator.
- C. Except as provided in subsections (E) and (F) of this rule, the Director shall determine in writing whether to grant the request. If the request is approved, the determination shall state the manner in which the procurement is to be effected, whether procurement authority is delegated to the using agency, and the limits of the determination.
- D. A copy of each request and determination processed under this procedure shall be kept on file in the using agency requesting the emergency procurement, the office of the Director, and the State Procurement Office.
- E. If the nature of the emergency does not permit submission of a written request, the using agency may make a verbal request to the Director who may make a verbal determination and delegation. The request required under subsection (A) of this rule shall be submitted to the Director within two working days following the initiation of the emergency procure-

ment.

- F.** The Director may approve a written request subsequent to the procurement if:
1. The emergency necessitated immediate response and it was impracticable to contact the Director;
 2. The procurement was made with as much competition as was practicable under the circumstances;
 3. The price paid was reasonable; and
 4. The request required under subsection (A) of this rule was submitted to the Director within two working days following the initiation of the emergency procurement.

R2-7-341. Competitive Selection Procedures for Services of Clergy, Physicians, Dentists, Legal Counsel, or Certified Public Accountants Repealed

- A.** The services of clergy, physicians, dentists, legal counsel, or certified public accountants, as specified in A.R.S. § 41-2513, shall be procured in accordance with R2-7-342 through R2-7-348, except as authorized under A.R.S. §§ 41-2535, 41-2536 or 41-2537.
- B.** Price shall be an evaluation factor in the procurements of the services specified in subsection (A) of this rule unless the State Procurement Administrator determines in writing that price as an evaluation factor is either not practicable or not advantageous to the state.

R2-7-342. Statement of Qualifications Repealed

- A.** If the services specified in R2-7-341 are needed on a recurring basis, the procurement officer may solicit persons engaged in providing the services to submit annual statements of qualifications on a prescribed form that shall include the following information:
1. Technical education and training;
 2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards;
 3. An expression of interest in providing a particular service; and
 4. Any other pertinent information requested by the procurement officer.
- B.** Persons who have submitted statements of qualifications may amend those statements at any time by filing a new statement.

R2-7-343. Request for Proposals Repealed

The Request for Proposals shall be in accordance with R2-7-326. The Requests for Proposals shall also be distributed to persons who have submitted statements of qualifications under R2-7-342 for the particular services sought.

R2-7-344. Receipt of Proposals Repealed

Proposals shall be received and opened in accordance with R2-7-329. Mistakes in proposals may be corrected or proposals withdrawn in accordance with R2-7-333. Late proposals, late modifications, or late withdrawals shall be considered in accordance with R2-7-328.

R2-7-345. Evaluation of Proposals Repealed

Proposals shall be evaluated in accordance with R2-7-330.

R2-7-346. Discussions with Individual Offerors Repealed

The purchasing agency conducting the procurement may conduct discussions with any offeror whose proposal is reasonably susceptible to being selected for award. Discussions shall be conducted in accordance with R2-7-331. Best and final offers shall be requested in accordance with R2-7-332.

R2-7-347. Evaluation and Contract Award Where Price is an Evaluation Factor Repealed

If price is one of the evaluation factors for contract award set forth in the Request for Proposals, the procurement officer shall evaluate proposals and award the contract in accordance with R2-7-334.

R2-7-348. Selection and Contract Award Where Price is not an Evaluation Factor Repealed

- A.** If price is not a factor, the purchasing agency shall determine in writing the acceptable proposals and rank the three most qualified offerors.
- B.** The offeror determined to be best qualified shall submit cost or pricing data to the purchasing agency.
- C.** The purchasing agency shall negotiate a contract with the best qualified offeror at compensation determined in writing to be fair and reasonable.
- D.** If the head of the purchasing agency and the best qualified offeror fail to negotiate a contract, the head of the purchasing agency shall notify the offeror in writing of the termination of negotiations. The head of the purchasing agency may then enter into negotiations with the next most qualified offeror. If negotiations fail, they shall be terminated, the offeror given notice, and negotiations commenced with the next most qualified offeror.
- E.** If the purchasing agency is unable to negotiate a contract with any of the offerors initially selected as the best qualified offerors, proposals may be resolicited or additional offerors may be selected based on original, acceptable proposals in the

Notices of Proposed Rulemaking

order of their qualification ranking. Negotiations may continue until a contract is awarded.

- ~~F. A written record in a manner prescribed by the State Procurement Administrator shall be maintained in the procurement file.~~

R2-7-349. Annual Report Repealed

~~Each purchasing agency shall submit annually to the Director a report of all service contracts awarded under A.R.S. § 41-2538 in the preceding fiscal year. The report shall identify the parties to the contract, the contract amount, duration, and the services performed.~~

R2-7-350. Cancellation of Solicitations; Rejection of Bids or Proposals Repealed

~~Each solicitation issued by the state shall state that the solicitation may be cancelled or bids or proposals rejected.~~

R2-7-351. Cancellation of Solicitation Before the Date and Time for Receipt of Bids and Proposals Repealed

- ~~A. Before the date and time that receipt of bids or proposals are due, a solicitation may be cancelled in whole or in part if the procurement officer determines in writing that cancellation is advantageous to the state.~~
- ~~B. If a solicitation is cancelled before the date and time that receipt of bids or proposals are due, notice of cancellation shall be sent to all persons to whom the procurement officer distributed a solicitation. The notice of cancellation shall identify the solicitation and briefly explain the reason for cancellation.~~
- ~~C. Any bids or proposals that have been received shall be returned unopened to the bidders or offerors.~~

R2-7-352. Cancellation of Solicitation After Receipt of Bids or Proposals Repealed

- ~~A. After receipt of bids or proposals but before award, a solicitation may be cancelled and all bids or proposals may be rejected in whole or in part if the procurement officer determines in writing that cancellation and rejection are advantageous to the state.~~
- ~~B. A notice of cancellation and rejection shall be sent to all bidders or offerors submitting bids or proposals in accordance with R2-7-351(B).~~
- ~~C. Bids or proposals received under the cancelled solicitation shall be retained in the procurement file. If the purchasing agency intends to issue another solicitation within a reasonable time after cancellation for the same materials, services or construction as under the cancelled solicitation, the purchasing agency may withhold from public inspection bids or proposals submitted under the cancelled solicitation if the procurement officer makes a written determination that such action is in the state's best interest. After award of a contract under the second solicitation, bids or proposals submitted in response to the cancelled solicitation shall be open for public inspection unless non-disclosure is required under R2-7-105(E).~~
- ~~D. The determination to cancel a solicitation and reject bids or proposals shall be made a part of the procurement file and shall be available for public inspection.~~

R2-7-353. Rejection of Individual Bids or Proposals Repealed

- ~~A. A bid may be rejected if:~~
- ~~1. The bidder is determined to be nonresponsive pursuant to R2-7-354; or~~
 - ~~2. The bid is nonresponsive in accordance with R2-7-320.~~
- ~~B. A proposal or quotation may be rejected if:~~
- ~~1. The person responding to the solicitation is determined to be nonresponsive pursuant to R2-7-354; or~~
 - ~~2. It is unacceptable;~~
 - ~~3. The proposed price is unreasonable; or~~
 - ~~4. It is otherwise not advantageous to the state.~~
- ~~C. Bidders or offerors whose bids or proposals are rejected under subsection (A) or (B) of this rule shall be notified in writing for the rejection. Record of the rejection shall be made part of the procurement file.~~

R2-7-354. Responsibility of Bidders and Offerors Repealed

- ~~A. A procurement officer shall determine that a bidder or offeror is responsible before awarding a contract to that bidder or offeror. The procurement officer's signature on the contract constitutes a determination that the bidder or offeror awarded the contract is responsible.~~
- ~~B. Factors to be considered in determining if a bidder or offeror is responsible include:~~
- ~~1. The bidder's or offeror's financial, physical, personnel or other resources, including subcontracts;~~
 - ~~2. The bidder's or offeror's record of performance and integrity;~~
 - ~~3. Whether the bidder or offeror is qualified legally to contract with the state; and~~
 - ~~4. Whether the bidder or offeror supplied all necessary information concerning its responsibility.~~
- ~~C. The procurement officer may establish specific responsibility criteria for a particular procurement. Any specific responsibility criteria shall be set forth in the solicitation.~~
- ~~D. If a procurement officer determines that a bidder or offeror is nonresponsive, the determination shall be in writing and set forth the basis for the determination. A copy of the determination shall be promptly sent to the nonresponsive bidder or~~

offeror. The final determination shall be made part of the procurement file.

R2-7-355. Prequalification Repealed

- A.** A prospective contractor need not be prequalified to be awarded a contract. Prequalification does not represent a determination of responsibility.
- B.** The existence of a qualified product list pursuant to R2-7-404(D)(2) does not constitute prequalification of any prospective supplier of that product.

R2-7-356. Bid and Performance Bonds for Material or Service Contracts Repealed

- A.** Bid and performance bonds or other security may be required for material or service contracts if the procurement officer determines that such requirement is advantageous to the state. The requirement for bonds or other security shall be included in the solicitation.
- B.** Acceptable bid or performance security shall be limited to:
 - 1. A surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1, and in a form prescribed by R2-7-505; or
 - 2. A certified or cashier's check.
- C.** Bid or performance bonds shall not be used as a substitute for a determination of bidder responsibility.
- D.** If a bid is withdrawn at any time before bid opening, any bid security shall be returned to the bidder.

R2-7-357. Submission of Cost or Pricing Data Repealed

- A.** Cost or pricing data shall be submitted except as provided in subsection (E) of this rule if the procurement officer determines in writing that:
 - 1. The amount of an original or adjusted price of a contract to be awarded by competitive sealed proposals, emergency procurement, sole source procurement, or pursuant to A.R.S. § 41-2578(D)(1) may exceed \$100,000; or
 - 2. The price adjustment of a contract awarded by competitive sealed bidding will result in an increase in cost in excess of \$100,000; or
 - 3. If the submission of cost or pricing data is otherwise advantageous to the state.
- B.** Cost or pricing data shall be submitted to the procurement officer prior to the commencement of price negotiations at the time and in the manner prescribed by the procurement officer.
- C.** In an emergency, cost or pricing data may be submitted at a reasonable time after the contract is awarded.
- D.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- E.** Pursuant to A.R.S. § 41-2543(C), the State Procurement Administrator may waive the requirement that cost or pricing data be submitted if such officer determines in writing that the waiver is advantageous to the state.
- F.** A copy of all determinations by the procurement officer or the State Procurement Administrator that pertain to the submission of cost or pricing data shall be maintained in the contract file.

R2-7-358. Certification of Current Cost or Pricing Data Repealed

- A.** As soon as practicable after agreement is reached on an original or adjusted contract price, the offeror or contractor shall certify in a form approved by the Director that the cost or pricing data submitted in support of a proposal pursuant to R2-7-357 is accurate, complete, and current as of a mutually determined date.
- B.** The procurement officer may waive the requirement that cost or pricing data be certified if he determines in writing that adequate price competition exists after examining cost or pricing data that is submitted in support of a proposal.
- C.** Additional certification or submission of additional data is not required if an option exercised subsequent to initial negotiation is based upon previously certified cost or pricing data.
- D.** The solicitation shall include a notice that certified cost or pricing data must be submitted.

R2-7-359. Refusal to Submit Cost or Pricing Data Repealed

- A.** If the offeror fails to submit cost or pricing data in the required form, the procurement officer may reject the offer.
- B.** If a contractor fails to submit data to support a price adjustment in the form required, the procurement officer may:
 - 1. Reject the price adjustment;
 - 2. Set the amount of the price adjustment subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

R2-7-360. Defective Cost or Pricing Data Repealed

- A.** The procurement officer may reduce the contract price if, upon a written determination, the cost or pricing data is defective.
- B.** The contract price shall be reduced in the amount of the defect plus related overhead and profit or fee if the procurement officer relied upon the defective data in awarding the contract.
- C.** Any dispute as to the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data may be appealed as a contract controversy under Article 9. Notwithstanding an appeal, the contract price shall

Notices of Proposed Rulemaking

be adjusted.

- ~~D.~~ If certification of current cost or pricing data is required, the awarded contract shall include notice of the right of the state to a reduction in price if certified cost or pricing data is subsequently determined to be defective.

R2-7-361. Price or Cost Analysis Repealed

The procurement officer shall conduct a price or cost analysis if submission of price or cost data is required.

R2-7-362. Authority to Use Contract Types Repealed

- ~~A.~~ The following contract types may be used by the procurement officer without obtaining a prior approval by the State Procurement Administrator:
- ~~1. Fixed price contract, except fixed price cost incentive contract;~~
 - ~~2. Lease; and~~
 - ~~3. Lease with purchase option.~~
- ~~B.~~ Any other type of contract may be used only if the State Procurement Administrator determines in writing prior to solicitation that the use of the contract is permitted by law and is advantageous to the state.

R2-7-363. Fixed price Contracts Repealed

- ~~A.~~ A fixed price contract may be used if:
- ~~1. The extent and type of work necessary to meet state requirements can be reasonably specified; and~~
 - ~~2. The cost can be reasonably estimated.~~
- ~~B.~~ A firm fixed price contract may be used if prices advantageous to the state can be established at the outset of the contract.
- ~~C.~~ Fixed price contract with price adjustment
- ~~1. The solicitation for a fixed price contract with price adjustment and the contract shall specify the basis for determining the price adjustment.~~
 - ~~2. Notice of price adjustment shall be given by the contractor in the manner and within the time specified in the contract.~~

R2-7-364. Lease and Lease purchase Contracts Repealed

- ~~A.~~ A lease may be entered into only after the procurement officer determines in writing that:
- ~~1. A lease is advantageous to the state;~~
 - ~~2. All conditions for renewal and costs of termination are set forth in the lease; and~~
 - ~~3. The lease is not used to circumvent required procurement procedures.~~
- ~~B.~~ A purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding or competitive sealed proposals and only after the procurement officer makes the determination required by R2-7-367(B).

R2-7-365. Cost reimbursement and Cost Incentive Contracts Repealed

A cost reimbursement or cost incentive type contract may be used only when the State Procurement Administrator determines in writing that the use of such contract is advantageous to the state.

R2-7-366. Time and Materials Contracts and Labor Hour Contracts Repealed

- ~~A.~~ Time and materials and labor hour contracts shall, to the extent possible, contain a stated ceiling or an estimate of a contractual amount that shall not be exceeded without prior approval of the State Procurement Administrator.
- ~~B.~~ A time and materials or labor hour contract may only be used if the State Procurement Administrator determines in writing that:
- ~~1. Personnel have been assigned to closely monitor the performance of the work; and~~
 - ~~2. It is advantageous to the state to use such contract; and~~
 - ~~3. No other contract type is practicable.~~

R2-7-367. Option Provisions Repealed

- ~~A.~~ If the procurement officer determines that a contract is to include an option for renewal, extension, or purchase, the applicable option provisions shall be included in the solicitation.
- ~~B.~~ Before exercising any option for renewal, extension, or purchase the procurement officer shall determine in writing that a competitive procurement is not more advantageous to the state than exercise of the particular option.

R2-7-368. Approval of Accounting System Repealed

Before the award of any contract except a firm fixed price contract, the procurement officer shall determine in writing that the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated and is adequate to allocate costs pursuant to Article 7.

R2-7-369. Anticompetitive practices among bidders or offerors Repealed

Upon submitting a bid or offer, the bidder or offeror must certify that the submission of the bid or offer did not include collusion or other anticompetitive practices.

R2-7-370. Record of Procurement Actions Repealed

A record of contracts in excess of \$10,000 made under A.R.S. §§ 41-2536 or 41-2537 shall be maintained pursuant to A.R.S. § 41-2551.

PART A. GENERAL PROVISIONS

R2-7-A301. Source Selection Method: Determination Factors

- A.** A state governmental unit shall use any existing Arizona state contract designated as mandatory to satisfy requirements for those materials and services covered by such contracts.
- B.** If a state governmental unit believes that an Arizona state contract, designated as mandatory, does not satisfy its requirements, the state governmental unit may only procure the material or service from another source with the written approval of the State Procurement Administrator and in conformance with the appropriate source selection method.
- C.** The agency chief procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent the Arizona Procurement Code.
- D.** The agency chief procurement officer shall not award a contract or incur an obligation on behalf of the state unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the agency chief procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

PART B. COMPETITIVE SEALED BIDDING

R2-7-B301. Solicitation

- A.** An agency chief procurement officer shall issue an invitation for bids at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- B.** An agency chief procurement officer shall:
 - 1.** Advertise the procurement in accordance with A.R.S. § 41-2533(C); and
 - 2.** At a minimum, provide written notice to the prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- C.** An agency chief procurement officer shall include the following in the solicitation:
 - 1.** Instruction to offerors, including:
 - a.** Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
 - b.** The deadline date for requesting a substitution or exception to the solicitation;
 - c.** The manner by which the offeror is required to acknowledge amendments;
 - d.** The minimum required information in the offer;
 - e.** The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f.** Any specific responsibility criteria;
 - g.** Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h.** Any evaluation criteria;
 - i.** A statement of where documents incorporated by reference are available for inspection and copying;
 - j.** A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k.** Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
 - l.** Certification by the offeror of compliance with A.R.S. § 41-3531 when offering electronics or information technology products, services, or maintenance;
 - m.** That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n.** Any bid security required;
 - o.** The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p.** Any designation of the specific bid items and amounts to be recorded at offer opening; and
 - q.** Any other offer submission requirements;
 - 2.** Specifications, including:
 - a.** Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;

Notices of Proposed Rulemaking

- b. If a brand name or equal specification is used, instructions that use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation;
 - 3. Terms and Conditions, including:
 - a. Whether the contract will include an option for extension; and
 - b. Any other contract terms and conditions.

R2-7-B302. Pre-Offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

R2-7-B303. Solicitation Amendment

- A.** An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 - 1. Make changes in the solicitation;
 - 2. Correct defects or ambiguities;
 - 3. Provide additional information or instructions; or
 - 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B.** If a solicitation is changed by a solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C.** It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A.** An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B.** The agency chief procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time

- A.** Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B.** The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C.** The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after thirty days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

R2-7-B306. Receipt, Opening, and Recording of Offers

- A.** An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date of when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B.** A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C.** The agency chief procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The agency chief procurement officer shall announce the name of the offeror; the amount of each offer; and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall record the name of each offeror, and the amount of each offer. The reader and the witness shall sign the record of offers and place it in the procurement file. The agency chief procurement officer shall make the record of offers available for public viewing.
- D.** Except for the information identified in R2-7-B306(C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-B307. Late Offers, Modifications, Withdrawals

- A.** If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late.
- B.** The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:

Notices of Proposed Rulemaking

1. The document is received before the contract award at the location designated in the solicitation; and
2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
 1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within thirty days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Prior to Award

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R2-7-104.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any bid security provided by an offeror.

R2-7-B309. One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall either:

1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable under R2-7-702;
 - b. The offer is responsive; and
 - c. The offeror is responsible; or
2. Reject the offer and:
 - a. Resolicit for new offers;
 - b. Cancel the procurement; or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award

- A. If an apparent mistake in an offer, relevant to the award determination is discovered after opening and before award, an agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:
 1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Notices of Proposed Rulemaking

R2-7-B311. Extension of Offer Acceptance Period

- A.** To extend the offer acceptance period, an agency chief procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B.** To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The agency chief procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

R2-7-B312. Bid Evaluation

- A.** An agency chief procurement officer shall evaluate offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation. Examples of such factors include, but are not limited to, transportation cost, energy cost, ownership cost, and any other identifiable cost or life cycle cost formula. The factors need not be precise predictors of actual future costs, but to the extent possible the factors shall be reasonable estimates based upon information the agency chief procurement officer has available concerning future use.
 - 1.** An agency chief procurement officer shall consider life cycle costs and application benefits when evaluating offers for the procurement of material or services identified in A.R.S. § 41-2553.
 - 2.** An agency chief procurement officer shall consider total life cycle costs including residual value when evaluating offers for the procurement of materials or services identified in A.R.S. § 41-2554.
- B.** An agency chief procurement officer shall conduct an evaluation to determine whether an offeror is responsive based upon the requirements set forth in the solicitation. The agency chief procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- C.** If there are two or more low, responsive offers from responsible offerors that are identical in price, the agency chief procurement officer shall make the award by drawing lots. If time permits, the agency chief procurement officer shall provide the offerors involved an opportunity to attend the drawing. The agency chief procurement officer shall ensure that the drawing is witnessed by at least one person other than the agency chief procurement officer.

R2-7-B313. Responsibility Determinations

- A.** The agency chief procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.
- B.** The agency chief procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:
 - 1.** The offeror's financial, physical, personnel, or other resources, such as subcontractors;
 - 2.** The offeror's record of performance and integrity;
 - 3.** Whether the offeror has been debarred or suspended;
 - 4.** Whether the offeror is legally qualified to contract with the state;
 - 5.** Whether the offeror promptly supplied all requested information concerning its responsibility; and
 - 6.** Whether the offeror meets the responsibility criteria specified in the solicitation.
- C.** If the agency chief procurement officer determines an offeror is nonresponsible, the agency chief procurement officer shall promptly send a determination to the offeror stating the basis for the determination. The agency chief procurement officer shall file a copy of the determination in the procurement file.
- D.** The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.
- E.** For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R2-7-B314. Contract Award

- A.** An agency chief procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B.** The agency chief procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C.** The agency chief procurement officer shall notify all offerors of an award.
- D.** After a contract is awarded, the agency chief procurement officer shall return any bid security provided by the offeror.
- E.** Within ten (10) days after a contract is awarded, the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-104.

R2-7-B315. Mistakes Discovered After Award

- A.** If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
 - 1.** Explanation of the mistake and any other relevant information;
 - 2.** A request for correction including the corrected offer or a request for withdrawal; and
 - 3.** The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

Notices of Proposed Rulemaking

- B.** Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C.** After cancellation of all or part of an award, if the offer acceptance period has not expired, the agency chief procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the state.

R2-7-B316. Multistep Sealed Bidding

- A.** An agency chief procurement officer shall obtain approval from the state procurement administrator before using multi-step sealed bidding as a source selection method.
- B.** To obtain approved for multistep sealed bidding, an agency chief procurement officer shall submit a written request to the state procurement administrator.
1. The written request shall contain all of the following:
 - a. An explanation that specifications or purchase descriptions are not available or sufficiently complete to permit full competition without technical evaluations and negotiations to ensure mutual understanding between each offeror and the state;
 - b. An identification of definite criteria that exist for evaluation of technical offers;
 - c. An identification that more than one available and technically qualified source exists; and
 - d. Confirmation that a fixed-price contract will be used.
 2. The state procurement administrator shall:
 - a. Issue written approval, with any conditions or restrictions;
 - b. Request additional information from the agency chief procurement officer; or
 - c. Deny the request.
- C.** Multi-step sealed bidding is initiated by the issuance of an invitation to submit technical offers. An agency chief procurement officer shall issue an invitation to submit technical offers as prescribed in subsection (A) that contains all of the following information:
1. Notice that the procurement is conducted in two phases. In phase 1 unpriced technical offers are considered and selected. In phase 2 there is competitive bidding by offerors whose offers were selected in phase 1.
 2. The best description of the material or service solicited;
 3. The requirements for each technical offer, such as drawings and descriptive literature;
 4. The criteria for evaluating each technical offer;
 5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
 6. A statement that negotiations may be held regarding the unpriced technical offer.
- D.** An agency chief procurement officer may conduct a pre-offer conference. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time period. Statements made during the pre-offer conference shall not be considered modifications to the solicitation.
- E.** An agency chief procurement officer may amend an invitation to submit technical offers before or after submission of unpriced technical offers. The agency chief procurement officer shall notify all suppliers who received the solicitation of the amendment and specify a revised offer due date and time. These suppliers may submit new offers or revise existing offers. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.
- F.** Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical offers are not considered except under the circumstances set forth in R2-7-B307(B). The agency chief procurement officer shall not disclose the contents of an unpriced technical offer to unauthorized persons.
- G.** Each unpriced technical offer shall be evaluated in accordance with the criteria in the invitation to submit technical offers to determine whether the offer is acceptable, potentially acceptable, or unacceptable. If the offer is unacceptable, the agency chief procurement officer shall issue a written determination that the offer is unacceptable, state the basis for the determination, and place the determination in the procurement file. If the agency chief procurement officer determines that an offeror's unpriced technical offer is unacceptable, the agency chief procurement officer shall notify that offeror in writing of the determination and indicate in the notice that the offeror is not afforded an opportunity to amend a technical offer.
- H.** An agency chief procurement officer may conduct negotiations with any offeror that submits an acceptable or potentially acceptable technical offer. During negotiations, the agency chief procurement officer shall not disclose any information obtained from an unpriced technical offer to any other offeror. After negotiations, the agency chief procurement officer

Notices of Proposed Rulemaking

shall establish a closing date for receipt of final technical offers and provide written notice of the closing date to offerors that submitted acceptable or potentially acceptable offers. The agency chief procurement officer shall maintain a record of all negotiations.

- I.** After receipt of final technical offers, an agency chief procurement officer shall determine which technical offers are acceptable for consideration in phase two. The agency chief procurement officer shall notify in writing each offeror whose technical offer was determined unacceptable.
- J.** At any time during phase one, an offeror may withdraw an offer.
- K.** Upon completion of phase one, an agency chief procurement officer shall issue a solicitation and conduct phase two as prescribed under R2-7-B301 – R2-7-B315 as a competitive sealed bidding procurement, except that the solicitation shall be issued only to offerors that submitted acceptable technical offers in phase one.
- L.** An agency chief procurement officer shall ensure that unpriced technical offers of unsuccessful offerors are available for public inspection except to the extent that the offer is confidential under R2-7-B306.

PART C. COMPETITIVE SEALED PROPOSALS

R2-7-C301. Solicitation

- A.** Prior to soliciting for offers under this Section, an agency chief procurement officer shall determine in writing that an invitation for bid is not practicable or advantageous to the state prior to soliciting for offers under this Section. Competitive sealed bidding may not be practicable or advantageous if it is necessary to:
 - 1.** Use a contract other than a fixed-price type;
 - 2.** Negotiate with offerors concerning the technical and price aspects of their offers and any other aspects of their offer or the solicitation;
 - 3.** Permit offerors to revise their offers; or
 - 4.** Compare the different price, quality, and contractual factors of the offers submitted.
- B.** The state procurement administrator may make a class determination that it is either not practicable or not advantageous to the state to procure specified types of materials or services by invitation for bid. The state procurement administrator may modify or revoke a class determination at any time.
- C.** An agency chief procurement officer shall issue a request for proposal at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- D.** The agency chief procurement officer shall:
 - 1.** Advertise in accordance with A.R.S. § 41-2534(C); and
 - 2.** At a minimum, provide written notice to prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- E.** The agency chief procurement officer shall include the following in the solicitation:
 - 1.** Instructions to offerors, including:
 - a.** Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
 - b.** The deadline date for requesting a substitution or exception to the solicitation;
 - c.** The manner by which the offeror is required to acknowledge amendments;
 - d.** The minimum information required in the offer;
 - e.** The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f.** Any specific responsibility or susceptibility criteria;
 - g.** Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
 - h.** Evaluation factors and the relative order of importance;
 - i.** A statement of where documents incorporated by reference are available for inspection and copying;
 - j.** A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k.** Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
 - l.** Certification by the offeror of compliance with A.R.S. § 41-3531 when offering electronics or information technology products, services, or maintenance;
 - m.** That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n.** Any offer security required;
 - o.** The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p.** Any cost or pricing data required;

Notices of Proposed Rulemaking

- q. The type of contract to be used;
- r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award and fall within the competitive range; and
- s. Any other offer requirements specific to the solicitation.
- 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equal specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
- 3. Terms and Conditions, including:
 - a. Whether the contract is to include an extension option; and
 - b. Any other contract terms and conditions.

R2-7-C302. Pre-Offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be not less than seven days before the offer due date and time, unless the agency chief procurement officer makes a written determination that the specific needs of the procurement justify a shorter time. Statements made during a pre-offer conference are not amendments to the solicitation.

R2-7-C303. Solicitation Amendment

- A.** An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 - 1. Make changes in the solicitation;
 - 2. Correct defects or ambiguities;
 - 3. Provide additional information or instructions; or
 - 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B.** If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C.** It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

R2-7-C304. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A.** An offeror may modify or withdraw their offer at any time, in writing, before the offer due date and time.
- B.** The agency chief procurement officer shall place the document submitted in the procurement file as a record of the modification or withdrawal.

R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time

- A.** Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B.** The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C.** The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after thirty days from notice of solicitation cancellation unless the offeror requests the offer be returned.

R2-7-C306. Receipt, Opening, and Recording of Offers

- A.** An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date of when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B.** A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C.** The agency chief procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The agency chief procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D.** Except for the information identified in R2-7-C306(C), the agency chief procurement officer shall ensure that information contained in the offer remain confidential until contract award and is shown only to those persons assisting in the evaluation process.

Notices of Proposed Rulemaking

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

- A.** If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.
- B.** The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
- 1.** The document is received before contract award at the location designated in the solicitation; and
 - 2.** The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C.** Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
- 1.** If the document is hand delivered, refuse to accept the delivery; or
 - 2.** If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within thirty days after the date on the notice unless the offeror requests the document be returned.
- D.** The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

R2-7-C308. Cancellation of Solicitation After Offer Opening and Prior to Award

- A.** Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B.** The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C.** The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer may withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation open for public inspection except for information determined to be confidential pursuant to R2-7-104.
- D.** In the event of cancellation, the agency chief procurement officer shall promptly return any offer security provided by an offeror.

R2-7-C309. Only One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall either:

- 1.** Award the contract to the offeror and prepare a written determination that:
 - a.** The price submitted is fair and reasonable pursuant to R2-7-702; and
 - b.** The offeror is responsible; or
- 2.** Reject the offer and:
 - a.** Resolicit for new offers;
 - b.** Cancel the procurement; or
 - c.** Use a different source selection method authorized under the Arizona Procurement Code.

R2-7-C310. Extension of Offer Acceptance Period

- A.** To extend the offer acceptance period, an agency chief procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors.
- B.** To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The agency chief procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

R2-7-C311. Determination of Not Susceptible for Award

- A.** An agency chief procurement officer may determine at any time during the evaluation period and prior to award that an offer is not susceptible for award. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
- 1.** The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 - 2.** The offer fails to comply with any susceptibility criteria identified in the solicitation; or
 - 3.** The offer is not within the competitive range in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is in the competitive range, the offer should be included.
- B.** The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

R2-7-C312. Responsibility Determinations

- A.** An agency chief procurement officer shall determine, at any time during the evaluation period and prior to award, that an offeror is responsible or nonresponsible.
- B.** The agency chief procurement officer may consider the following factors before determining that an offeror is responsible

Notices of Proposed Rulemaking

or nonresponsible:

1. The offeror's financial, physical, personnel, or other resources, including subcontractors;
 2. The offeror's record of performance and integrity;
 3. Whether the offeror has been debarred or suspended;
 4. Whether the offeror is legally qualified to contract with the state;
 5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
 6. Whether the offeror meets any responsibility criteria specified in the solicitation.
- C.** The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is nonresponsible unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors. The agency chief procurement office shall file a copy of the determination in the procurement file.
- D.** The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540(B).
- E.** For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

R2-7-C313. Clarification of Offers

- A.** The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B.** The agency chief procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C.** The agency chief procurement officer shall retain any clarifications in the procurement file.

R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers

- A.** An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B.** Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the offeror shall confirm the negotiations in writing.
- C.** If negotiations are conducted, negotiations shall be conducted with all offerors determined to be in the competitive range or reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D.** An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E.** Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F.** An offeror may withdraw an offer at any time prior to the final proposal revision due date and time by submitting a written request to the agency chief procurement officer.

R2-7-C315. Final Proposal Revisions

- A.** An agency chief procurement officer shall request written final proposal revisions from any offeror with whom negotiations have been conducted, unless the offeror has been determined not susceptible for award under R2-7-C312 or nonresponsible under R2-7-D313. The agency chief procurement officer shall include in the written request:
1. The date, time, and place for submission of final proposal revisions; and
 2. A statement that if offerors do not submit a written notice of withdrawal or a written final proposal revision, their immediate previous written proposal revision will be accepted as their final proposal revision.
- B.** The agency chief procurement officer shall request written final proposal revisions only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- C.** If an apparent mistake, relevant to the award determination, is discovered after opening of final proposal revisions, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- D.** An offeror who discovers a mistake in their final proposal revision may request withdrawal or correction in writing, and

Notices of Proposed Rulemaking

shall include the following in the written request:

1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E.** In response to a request made under subsections (D) or (E), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of their final proposal revision, the agency chief procurement officer shall make a written determination that the most recent written proposal revision submitted is the final proposal revision.

R2-7-C316. Evaluation of Offers

- A.** An agency chief procurement officer shall evaluate offers and final proposal revisions based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B.** An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. The agency chief procurement officer may:
1. Accept or reject the findings of the evaluation committee;
 2. Request additional information from the evaluation committee; or
 3. Replace the evaluation committee.
- C.** The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

R2-7-C317. Contract Award

- A.** An agency chief procurement officer shall award the contract to the responsible offeror or offerors whose offer is determined to be most advantageous to the state based on the evaluation factors set forth in the solicitation. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- B.** Before awarding any cost reimbursement contract, the agency chief procurement officer shall determine in writing that:
1. The offeror's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated, and
 2. It is adequate to allocate costs pursuant to R2-7-702.
- C.** The agency chief procurement officer shall notify all offerors of an award.
- D.** After contract award, the agency chief procurement officer shall return any offer security provided by the offeror.
- E.** Within ten (10) days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-104.

R2-7-C318. Mistakes Discovered After Award

- A.** If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B.** Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
1. Allow correction of the mistake;
 2. Cancel the all or part of the award; or
 3. Deny correction or withdrawal.
- C.** After cancellation of all or part of an award, if the offer acceptance period has not expired, the agency chief procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-D301. Applicability

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, including construction, the agency chief procurement officer shall issue a request for quotation under R2-7-D303 unless any of the following apply:

1. The purchase can be made from a state or agency contract;
2. The purchase can be made from a set aside organization as established in Article 10;
3. The purchase is not expected to exceed \$5,000.00;
4. The purchase is made as a sole source procurement under A.R.S. § 41-2536;

5. The agency chief procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances;

R2-7-D302. Solicitation – Request for Quotation

A. A request for quotation shall be issued for purchases estimated to exceed \$5,000 but will be less than that specified in A.R.S. § 41-2535. The agency chief procurement officer shall include the following in the solicitation:

1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
3. The minimum information that the offer shall contain;
4. Any evaluation factors;
5. Whether negotiations may be held;
6. Any contract options including renewal or extension;
7. The uniform terms and conditions by text or reference; and
8. Any other terms, conditions, or instructions specific to the procurement.

B. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:

1. The purchase has been unsuccessfully competed under R2-7-D303, including failure to obtain fair and reasonable prices; or
2. The agency chief procurement officer has made a written determination that restricting the procurement to small business is not practical under the circumstances.

R2-7-D303. Request for Quotation Issuance

The agency chief procurement officer shall issue the request for quotation by one of these methods:

1. Post the request for quotation on the state procurement office's centralized electronic system indicating the date which offers are due. The request for quotation shall be posted for a reasonable time as determined by the agency chief procurement officer based on the needs of the purchasing agency.
2. Distribute the request for quotation to a minimum of three small businesses. The agency chief procurement officer shall rotate suppliers invited to submit quotations and shall invite at least one small minority- or small women-owned business enterprise to submit a quote. If the agency chief procurement officer is unable to locate a small minority or small women-owned business enterprise, the agency chief procurement officer shall document in the procurement file.
3. The agency chief procurement officer may cancel the request for quotation at any time by making a written determination that cancellation is advantageous to the state.

R2-7-D304. Contract Award

A. If only one responsive offer is received, the agency chief procurement officer shall explain in writing whether award of the contract is advantageous to the state and place the determination in the procurement file.

B. The agency chief procurement officer shall award a contract to the small business determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation. If award is pursuant to R2-7-E302(B)(1) or R2-7-E302(B)(2), the agency chief procurement officer shall award a contract to the offeror determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation.

C. The agency chief procurement officer shall place the written basis for the award in the procurement file.

D. The agency chief procurement officer shall make the procurement file available to the public on the date of contract award, except for those items considered confidential under R2-7-103.

R2-7-D305. Purchases of \$5000 and Less

The agency chief procurement officer shall use reasonable judgment in awarding contracts of \$5,000 and less that are advantageous to the state. The agency chief procurement officer may but is not required to request quotations.

**PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN
A.R.S. § 41-2535**

R2-7-E301. Sole Source Procurements

A. For the purposes of this Section, the term "sole source procurement means a material or service procured without competition when:

1. There is only a single source for the material or service; or
2. No reasonable alternative source exists.

B. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with A.A.C. R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer

Notices of Proposed Rulemaking

shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:

1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists;
 2. The name of the proposed supplier;
 3. The duration and estimated total dollar value of the proposed procurement;
 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702; and
 5. A description of efforts made to seek other sources.
- C.** The state procurement administrator shall post the request on the state procurement office web site and invite comments on the sole source request for 5 working days. Following this period, the state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- D.** If the sole source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.
- E.** The agency chief procurement officer shall keep a record of all sole source procurements pursuant to A.R.S. § 41-2551.

R2-7-E302. Emergency Procurements

- A.** For the purposes of this Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the state’s best interests are not met through the use of other source selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property or the health or safety of a person.
- B.** This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The agency chief procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C.** The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with A.A.C. R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit the written request for, or notification of, the emergency procurement to the state procurement administrator. The request shall include the following information:
1. A description of the procurement need and the reason for the emergency;
 2. The name of the supplier;
 3. The duration and estimated total dollar value of the procurement; and
 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702.
- D.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an emergency procurement. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- E.** An employee acting within the authority of a using agency may proceed with an emergency procurement without approval from the state procurement administrator if the emergency necessitates immediate response and it is impracticable to contact the state procurement administrator. The agency chief procurement officer shall submit a written confirmation of the emergency procurement to the state procurement administrator within five working days of the emergency.
- F.** A using agency making an emergency procurement shall limit the procurement to such actions necessary to address the emergency.
- G.** A using agency making an emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the state.
- H.** The agency chief procurement officer shall keep a record of all emergency procurements pursuant to A.R.S. § 41-2551.

R2-7-E303. Competition Impracticable Procurements

- A.** For the purposes of this Section, “competition impracticable” means a procurement requirement exists which makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302.
- B.** An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with A.A.C. R2-7-202.
- C.** The agency chief procurement officer shall submit a written request for approval containing the following:
1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;

2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
 3. An explanation of why the proposed procurement process is advantageous to the state; and
 4. The scope, duration, and estimated total dollar value of the procurement need.
- D.** The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- E.** Prior to modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.
- F.** The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS

R2-7-F301. Statement of Qualifications

- A.** The procurement officer may request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form which shall include, but not be limited to the following information:
1. Technical education and training;
 2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards; and
 3. Any other relevant information requested by the purchasing agency.
- B.** Persons who have submitted statement of qualifications may submit additional information or change information that was previously submitted at any time.
- C.** The procurement officer may, in lieu of R2-7-F306(A), incorporate the statement of qualifications as part of the solicitation pursuant to R2-7-F302.

R2-7-F302. Solicitation

- A.** For procurements not exceeding the amount prescribed in A.R.S. § 41-2535, except as authorized under A.R.S. § 41-2536, the procurement officer shall comply with Part D of this Article.
- B.** For procurements exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall follow the procedures below, except as authorized under A.R.S. §§ 41-2536 or 41-2537:
1. The procurement officer shall issue a request for proposal providing adequate notice based on the circumstances.
 2. The procurement officer shall provide notice to prospective suppliers registered at the state procurement office for the specific service and, if R2-7-F301 has been implemented, to persons who have submitted statements of qualifications for the particular services solicited, or both.
 3. The procurement officer shall include the following in the solicitation:
 - a. A specific offer due date and time, or that offers will be accepted on an open and continuous basis. If offers are accepted on an open and continuous basis, the designated, continuous day and time in which offers will be opened;
 - b. The location where offers will be received;
 - c. The offer acceptance period;
 - d. The manner by which the offeror is required to acknowledge amendments;
 - e. A description of the services needed;
 - f. The type of qualifications, experience, licensing, or other information required;
 - g. The minimum information in the offer;
 - h. Any evaluation criteria;
 - i. Any applicable contract terms and conditions;
 - j. A statement that negotiations may be conducted to determine the offeror's qualifications for further consideration;
 - k. Any cost or pricing data required;
 - l. The type of contract to be used;
 - m. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - n. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices; and
 - o. A statement of whether the services shall be retained for a stated or on-going period of time and whether the contract is to include any option for renewal or extension.

Notices of Proposed Rulemaking

R2-7-F303. Solicitation Amendment

- A.** An procurement officer shall issue a solicitation amendment to do any or all of the following:
1. Make changes in the solicitation;
 2. Correct defects or ambiguities;
 3. Provide additional information or instructions; or
 4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the state.
- B.** If a solicitation is changed by a written solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.
- C.** It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

R2-7-F304. Cancellation of Solicitation

- A.** Based on the best interest of the state, the procurement officer may cancel a solicitation at any time prior to award.
- B.** Based on the best interest of the state, the procurement officer may cancel an open and continuous solicitation at any time during the active period of the solicitation. Contracts that have already been awarded in accordance with the solicitation shall not be affected by the cancellation.
- C.** The procurement officer shall notify offerors of the cancellation in writing.
- D.** The procurement officer shall return any offers received to the offerors.

R2-7-F305. Receipt, Opening, and Recording of Offers

- A.** An procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date of when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B.** A purchasing agency may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.
- C.** The procurement officer shall open offers publicly, in the presence of one or more witnesses, after the offer due date and time. The procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the procurement officer. The reader and the witness shall sign the record of offers and place it in the procurement file. The procurement officer shall make the record of offers available for public viewing.
- D.** Except for the information identified in R2-7-C306(C), the procurement officer shall ensure that information contained in the offer remain confidential until contract award and is shown only to those persons assisting in the evaluation process.

R2-7-F306. Timely and Late Modifications or Withdrawals of Offer

- A.** An authorized representative of an offeror may withdraw an offer in writing if the written request for withdrawal is received by the procurement officer before the designated offer due date and time or the designated, continuous offer due day and time.
- B.** An offeror may withdraw or modify an offer at any time before the due date and time or designated, continuous day and time for offer opening and prior to contract award by submitting a written request to the procurement officer.
- C.** If a modification or a withdrawal is not received by the designated offer due date and time or the designated, continuous day and time for offer opening, the procurement officer shall determine the modification or withdrawal as late. The procurement officer shall reject a late modification or withdrawal unless:
1. The document is received before the contract award; and
 2. The document would have been received by the designated offer due date and time or the designated, continuous day and time for offer opening but for the action or inaction of state personnel directly serving the purchasing agency.
- D.** Upon receiving a late modification or withdrawal, the procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt, and promptly sent written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within thirty days after the date on the notice unless the offeror requests the document be returned.
- E.** The procurement officer shall document a refusal under (C)(1) and place this document or a copy of the notice required in (C)(2) in the procurement file.

R2-7-F307. Late Offers

- A.** If a specific offer due date and time has been identified in the solicitation, the procurement officer shall reject any offer received after the specified offer due date and time.
1. The procurement officer shall accept a late offer if the document is received before contract award or it would have been received by the offer due date and time but for the action or inaction of state personnel directly serving the purchasing agency.

Notices of Proposed Rulemaking

2. Upon receiving a late offer, the procurement officer shall:
 - a. If the document is hand delivered, refuse to accept the delivery; or
 - b. If the document is not hand delivered, record the time and date of receipt and promptly sent written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within thirty days after the date on the notice unless the offeror requests the document be returned.
3. The procurement officer shall document a late offer in the procurement file.
- B. If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

R2-7-F308. Negotiations with Offerors

- A. The procurement officer may conduct negotiations with any or none of the offerors.
- B. The procurement officer may conduct negotiations to improve offers in such areas as cost, price, specifications, performance, or terms, and to achieve best value for the state.
- C. The procurement officer shall document the results of negotiations in writing. Final proposal revisions are not required, but may be used at the discretion of the procurement officer.
- D. The procurement officer shall ensure that negotiations do not disclose any information derived from other offers.

R2-7-F309. Contract Award

- A. The procurement officer shall award the contract to the offeror or offerors best qualified based on the evaluation factors set forth in the request for proposals and after making a written determination that the price is fair and reasonable. The procurement officer shall not award a contract based solely on price.
- B. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- C. The procurement officer shall award contracts pursuant to A.R.S. § 41-2513(B) through (D) where applicable.
- D. Within 10 days after contract award the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-104.

R2-7-F310. Mistakes Discovered After Award

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
 1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the procurement officer may:
 1. Allow correction of the mistake;
 2. Cancel the all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

PART G. OTHER SOURCE SELECTION

R2-7-G301. Request for Information

An agency chief procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. To the extent allowed by law, information contained in a response to a request for information may be considered confidential until the procurement process is concluded or two years, whichever occurs first.
3. There is no required format to be used for requests for information.

R2-7-G302. Demonstration Projects

- A. An agency chief procurement officer shall submit a written request written to the state procurement administrator to award a contract for a demonstration project. The written request shall contain the following:
 1. Name of the agency or agencies;
 2. Name of the contractor;
 3. Description of the project, including unique and innovative features of the project;
 4. Statement and explanation that project is in best interest of the state;
 5. Duration of the Project; and
 6. Proposed contract terms and conditions.

Notices of Proposed Rulemaking

- B.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a demonstration projects. The state procurement administrator shall either:
 - 1. Issue written approval, with any conditions or restrictions;
 - 2. Request additional information from the agency chief procurement officer; or
 - 3. Deny the request.
- C.** Demonstration projects shall be provided by the contractor at no cost and the state shall not be obligated to purchase or lease the services or materials from the contractor.
- D.** The agency chief procurement officer may submit a written request to the state procurement administrator to purchase or lease from the demonstration contractor. The written request shall be submitted within twelve (12) months after the demonstration project begins or within twelve (12) months after the demonstration project ends and contain the following:
 - 1. Name of the agency or agencies;
 - 2. Name of the contractor;
 - 3. Description of the project, including unique and innovative features of the project;
 - 4. Statement and explanation that lease or purchase is in best interest of the state;
 - 5. Cost to the state;
 - 6. Duration of the proposed contract; and
 - 7. Proposed contract terms and conditions.
- E.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with purchasing or leasing from the demonstration contractor. The state procurement administrator shall either:
 - 1. Issue written approval, with any conditions or restrictions;
 - 2. Request additional information from the agency chief procurement officer; or
 - 3. Deny the request.
- F.** The term of the contract resulting from a demonstration project shall not exceed two years.

R2-7-G303. Unsolicited Proposals

- A.** An unsolicited proposal shall be a proposal that is submitted at the initiative of the offeror, and not in response to a solicitation.
- B.** An unsolicited proposal shall be submitted in writing and in sufficient detail for the agency chief procurement officer to understand the proposal.
- C.** An unsolicited proposal shall not be an advance offer to a known state requirement.
- D.** An agency chief procurement officer shall submit a written request to the State Procurement Administrator to award a contract resulting from an unsolicited proposal. The written request shall contain the following:
 - 1. Name of the agency or agencies;
 - 2. Name of the contractor;
 - 3. Description of the project, including unique and innovative features of the project;
 - 4. Statement and explanation that project is in best interest of the state;
 - 5. Duration of the Project; and
 - 6. Proposed contract terms and conditions.
- E.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an unsolicited proposal. The state procurement administrator shall either:
 - 1. Issue written approval, with any conditions or restrictions;
 - 2. Request additional information from the agency chief procurement officer; or
 - 3. Deny the request.

R2-7-G304. General Services Administration Contracts

- A.** An agency chief procurement officer may purchase using General Services Administration (GSA) schedules or contracts under the following conditions:
 - 1. Use of the GSA contract or schedule is cost effective and in the best interest of the state;
 - 2. Price is equal to or less than the contractor's current GSA price;
 - 3. Price is fair and reasonable;
 - 4. Contractor is willing to offer GSA pricing and terms to the state;
 - 5. Comparable products or services are not available under a state or agency contract;
 - 6. Comparable products or services are not restricted under a set-aside contract; and
 - 7. Contractor accepts required state contract terms and conditions.
- B.** An agency chief procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the state. The determination shall contain the following:
 - 1. Name of the contractor;
 - 2. GSA contract or schedule number;
 - 3. Procurement description;

Notices of Proposed Rulemaking

4. Analysis of price, quality and other relevant factors; and
5. Statement that the price is fair and reasonable.

R2-7-G305. Private Public Partnership Contracts

- A.** As referenced in this Article, a public-private partnership contract is a government contract and not a partnership. The government shall not jointly own or share property with the contractor and the government shall not be responsible for the contractor's liabilities.
- B.** An agency chief procurement officer shall submit a written request to the State Procurement Administrator to enter into a public-private partnership contract. The written request shall contain the following:
1. Name of the agency or agencies;
 2. Name of the contractor;
 3. Description of the public-private partnership, including obligations of the agency and the contractor;
 4. Statement and explanation that project is in best interest of the state;
 5. Proposed contract price and assessment of the proposed value;
 6. Description of the proposed performance measurement criteria and methods;
 7. Duration of the Project; and
 8. Proposed contract terms and conditions.
- C.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a private public partnership. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- D.** If the request is approved, the contract shall be awarded in accordance with A.R.S. §§ 41-2533, 41-2534, 41-2535, 41-2536, or 41-2537.
- E.** The using agency shall be responsible for obtaining all necessary approvals, including from the Government Information Technology Agency and Joint Legislative Budget Committee before entering into a public-private partnership contract.

ARTICLE 4. SPECIFICATIONS

R2-7-401. Definitions Preparation of Specifications

In this Article, unless the context otherwise requires:

1. "Brand name or equal specification" means a specification that uses one or more manufacturers' names or catalogue numbers to describe the standard of quality, performance, and other characteristics needed to meet state requirements, and that provides for the submission of equivalent products.
 2. "Brand name specification" means a specification limited to one or more items by manufacturers' names or catalogue numbers.
 3. "Proprietary specification" means a specification that describes a material made and marketed by a person having the exclusive right to manufacture and sell such material and excludes other material with similar quality, performance or functional characteristics from being responsive to the solicitation.
 4. "Qualified products list" means an approved list of materials described by model or catalogue numbers that, prior to competitive solicitation, the state has determined will meet the applicable specification requirements.
 5. "Specification for a common or general use item" means a specification that has been developed and approved for repeated use in procurements pursuant to R2-7-404(A).
 6. "Standard commercial material" means material that, in the normal course of business, is customarily maintained in stock or readily available by a manufacturer, distributor or dealer for the marketing of such material.
- A.** State governmental units may prepare and utilize specifications only under the authority delegated by the state procurement administrator under R2-7-202.
- B.** An agency chief procurement officer delegated the authority to prepare and utilize specifications shall comply with the requirements of A.R.S. § 41-2561 through A.R.S. § 41-2568 and ensure specifications used support maximum practical competition.
- C.** The agency chief procurement officer may contract for the preparation of specifications with persons other than state personnel.
- D.** Notwithstanding the provisions of this Section, the state procurement administrator retains the authority to prepare, issue, revise, and monitor all specifications and plans.
- E.** If a mandatory specification has been designated by the state procurement administrator for a particular material, service, or construction item, it shall be used unless the state procurement administrator makes a written determination that its use is not advantageous to the state and that another specification may be used.

Notices of Proposed Rulemaking

R2-7-402. Preparation Utilization of Specifications

~~A.~~ Specifications shall be prepared by the Director, or by using agencies pursuant to R2-7-408 or by contract pursuant to R2-7-410.

~~B.~~ In an emergency under A.R.S. § 41-2537, any necessary specifications may be utilized by the Purchasing or using agency without regard to the provisions of this Chapter.

The agency chief procurement officer may use any type of specification that describes the procurement requirement and promotes competition, except that the agency chief procurement officer shall not use proprietary or restrictive specifications without the prior written approval of the state procurement administrator.

R2-7-403. Content Determination for Use of Brand Name Type Specifications

~~A.~~ A specification may provide alternate descriptions of materials, services, or construction items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.

~~B.~~ To the extent practicable, a specification shall not include any solicitation term or condition or any contract term or condition.

~~C.~~ If a specification for a common or general use item has been developed in accordance with R2-7-404(A) or a qualified products list has been developed in accordance with R2-7-404(D) for a particular material, service, or construction item, it shall be used unless the State Procurement Administrator makes a written determination that its use is not advantageous to the state and that another specification shall be used.

~~D.~~ To the extent practicable, specifications shall emphasize functional or performance criteria. To facilitate the use of such criteria, using agencies shall use reasonable efforts to include the principal functional or performance requirements as a part of their purchase requisitions.

A. The state procurement administrator may authorize the use of a brand name only specification if a written determination is made that only the identified brand name item will satisfy the state's needs.

B. The agency chief procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practical competition.

C. The agency chief procurement officer may use a brand name or equal specification when the agency chief procurement officer determines this type of specification is in the best interest of the state.

R2-7-404. Types of Specifications Repealed

~~A.~~ Specifications for common or general use items. To the extent practicable, a specification for common or general use item shall be prepared and utilized when:

- ~~1.~~ A material, service or construction item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the material, service, or construction item, as commercially produced or provided, remain relatively stable while the frequency or volume of procurements is significant;
- ~~2.~~ The state's recurring needs require uniquely designed or specially produced items; or
- ~~3.~~ The State Purchasing Administrator or using agency authorized to prepare such specifications finds it to be advantageous to the state.

~~B.~~ Brand name or equal specification

- ~~1.~~ A brand name or equal specification may be used when the procurement officer determines in writing that use of a brand name or equal specification is advantageous to the state and that:
 - ~~a.~~ No specification for a common or general use item or qualified products list is available;
 - ~~b.~~ Time does not permit the preparation of another form of specification, other than a brand name specification; or
 - ~~c.~~ The nature of the product or the state's requirements makes use of a brand name or equal specification suitable for the procurement.
- ~~2.~~ Such determination may be made for categories of materials, services, or construction items or, in appropriate circumstances, for an entire procurement action even though a number of different items are being procured.
- ~~3.~~ A brand name or equal specification shall designate as many different brands as are practicable as "or equal" references.
- ~~4.~~ A brand name or equal specification shall include a description of the particular design, functional, or performance characteristics that are required unless the procurement officer authorized to approve specifications determines that the essential characteristics of the brand names designated in the specifications are commonly known.
- ~~5.~~ A solicitation that uses a brand name or equal specification shall explain that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration.

~~C.~~ Brand name specification

- ~~1.~~ A brand name specification may be prepared and utilized only if the State Procurement Administrator makes a written determination that only the identified brand name item will satisfy the state's needs.
- ~~2.~~ If a brand name specification is utilized the procurement officer shall, to the extent practicable, identify sources from

which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practicable competition. If only one source can supply the requirement, the procurement shall be made under A.R.S. § 41-2536.

~~D. Qualified products list.~~

- ~~1. A qualified products list may be prepared and utilized when the procurement officer authorized to develop qualified products lists determines that testing or examination of the materials or construction items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.~~
- ~~2. The procurement officer shall solicit as many potential suppliers as practicable to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration in accordance with the schedule or procedure established for this purpose. The qualified products list shall not be modified after the solicitation is issued.~~
- ~~3. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with requirements published by the State Procurement Office.~~
- ~~4. Qualified products lists' test results shall protect the identity of the suppliers.~~

R2-7-405. Confidentiality Repealed

- ~~A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection, except to the extent that the withholding of such information is permitted or required by law.~~
- ~~B. If the supplier believes that information it has provided to the procurement officer contains trade secrets or proprietary data that should be kept confidential, a statement advising the procurement officer of this fact must accompany the specification in accordance with R2-7-104.~~

R2-7-406. Reserved Repealed

R2-7-407. Using Agency Advice and Assistance Repealed

~~The using agency shall submit advice and assistance in the development of specifications or plans pursuant to a request from the Director.~~

R2-7-408. Preparation and Utilization of Specifications and Plans by Using Agencies Repealed

- ~~A. The Director may delegate the authority to prepare and utilize specifications or plans to using agencies pursuant to R2-7-201.~~
- ~~B. Using agencies delegated the authority to prepare and utilize specifications or plans shall comply with the requirements of Article 4.~~
- ~~C. Notwithstanding the provisions of this rule or R2-7-410, the Director retains the authority to approve or disapprove all specifications and plans.~~

R2-7-409. Requirements of Nonrestrictiveness Repealed

- ~~A. Nonexclusive specifications~~
- ~~1. Unless otherwise permitted by this Chapter, all specifications shall describe the state's requirements in a manner that does not unnecessarily exclude a material, service, or construction item.~~
 - ~~2. Proprietary specifications shall not be used unless the State Procurement Administrator determines in writing that such specifications are required by demonstrable technological justification and that it is not practicable or advantageous to use a less restrictive specification. Past success in the material's performance, traditional purchasing practices, or inconvenience of drawing specifications do not justify the use of proprietary specifications.~~
- ~~B. To the extent practicable, the state shall use accepted commercial specifications and shall procure standard commercial materials.~~

R2-7-410. Preparation of Specifications or Plans by Persons Other Than State Personnel Repealed

- ~~A. The Director may contract for the preparation of specifications or plans for public contracts by persons other than state personnel including but not limited to architects, engineers, designers, and other draftsmen.~~
- ~~B. The requirements of this Article shall apply to all specifications or plans prepared by persons other than state personnel pursuant to subsection (A) of this rule. Contracts for the preparation of specifications or plans by persons other than state personnel shall require them to adhere to such requirements.~~

R2-7-411. Conflict of Interest Repealed

- ~~A. No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.~~
- ~~B. A procurement officer may waive the restriction set forth in subsection (A) of this rule if the procurement officer determines in writing that its application would not be in the state's best interest. The procurement officer shall use as guidance in making that determination the organizational conflicts of interest regulations set forth in the Code of Federal Regulations, 48 CFR Chapter 1, Subpart 9.5 (October 1, 1991), excluding later amendments or editions, incorporated by refer-~~

Notices of Proposed Rulemaking

ence herein and on file with the Secretary of State. The determination shall state the specific reasons that the restriction in subsection (A) of this rule has been waived.

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIED PROFESSIONAL SERVICES

R2-7-501. Definitions Procurement of Specified Professional and Construction Services

In this Article, unless the context otherwise requires:

1. "Force account" means work performed by the state's regularly employed personnel.
2. "Specified professional services" means services of architect, engineer, land surveying, assayer, geologist and landscape architect.

A. The agency chief procurement officer shall procure specified professional services as defined in A.R.S. § 41-2578(A) in the following manner:

1. Through existing state contracts if available;
2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
3. In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(2); or
4. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2578(C)(2).

B. Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:

1. Through existing state contracts if available;
2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or § 41-2533 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2537.

C. The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:

1. Through existing state contracts if available;
2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
3. In accordance with A.R.S. § 41-2578 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2537.

R2-7-502. Coordination Compliance with the Department

~~A purchasing agency procuring construction or architectural or engineering services for construction shall coordinate the procurement and contract administration with the Facilities Management Division of the Department as required by A.R.S. § 41-790 et seq.~~

A purchasing agency shall comply with the procurement and contract administration requirements of the Department as required by A.R.S. § 41-790 et seq.

R2-7-503. Bid Security Procurement of Construction Using Alternate Project Delivery Methods

~~**A.** Invitations for Bid on state construction contracts shall require the submission of bid security in an amount equal to at least 10% of the bid, at the time the bid is submitted. If a bidder fails to submit the required bid security with the bid, the bid shall be deemed nonresponsive except as provided by R2-7-503(C).~~

~~**B.** Acceptable bid security. Acceptable bid security shall be limited to:~~

1. ~~An annual or one-time surety bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form as prescribed by A.R.S. § 41-2573 and R2-7-505; or~~
2. ~~A certified or cashier check.~~

~~**C.** Nonsubstantial failure to comply. The Assistant Director for Facilities Management may determine that noncompliance is nonsubstantial if:~~

1. ~~Only one bid is received and there is not sufficient time to rebid; or~~
2. ~~The amount of the bid security submitted, although less than the amount required by the Invitation for Bids, is equal to or greater than the difference between the apparent low bid and the next higher acceptable bid; or~~
3. ~~The bid security is inadequate as a result of correcting or modifying a bid in accordance with R2-7-319, if the bidder increases the amount of security to required limits within two days after notification.~~

The agency chief procurement officer may use an alternate project delivery method if the agency chief procurement officer

Notices of Proposed Rulemaking

determines in writing that it is in the best interest of the state pursuant to A.R.S. § 41-2579(F), based on the following factors:

1. Cost and cost control method;
2. Value engineering;
3. Market conditions;
4. Schedule;
5. Required specialized expertise;
6. Technical complexity of the project; or
7. Project management.

R2-7-504. Performance and Payment Bonds Notice

- A.** Acceptable performance and payment bonds shall be limited to a performance bond and a payment bond executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Director of the Department of Insurance pursuant to A.R.S. Title 20, Chapter 2, Article 1 and in a form prescribed by A.R.S. § 41-2574 and R2-7-505.
- B.** The performance bond and the payment bond shall be delivered by the contractor to the state at the same time the contract is executed. If a contractor fails to deliver the required performance bond or payment bond, the contractor's bid shall be rejected, its bid security shall be enforced, and award of the contract shall be made pursuant to this Chapter.
- A.** The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.
- B.** For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3, of this Chapter, unless otherwise authorized pursuant to A.R.S. §§ 41-2536 or 41-2537.
- C.** For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
 2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least fifteen days prior to the offer due date.

R2-7-505. Bond Forms Selection Committee

Bid bonds, performance bonds, and labor and material payment bonds shall be executed on forms substantially equivalent to SPO 301, SPO 302, and SPO 303, respectively, on file with the Secretary of state and incorporated by this reference.

- A.** The agency chief procurement officer shall appoint a selection committee when required under A.R.S. § 41-2578.
- B.** For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(1), the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members including the agency chief procurement officer as chair.
- C.** For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. § 41-2578(C)(1), the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to seven members who are appropriately qualified including the agency chief procurement officer as chair.

R2-7-506. The Form of Substitute Bid Security

The form of security that may substitute for contract payment retention is limited to the following:

1. An assignment of time certificates of deposit by financial institutions licensed by this state;
 2. Share certificate of a saving and loan institution or credit union authorized to transact business in this state; or
 3. Security issued or guaranteed as to principal and interest by:
 - a. The United States;
 - b. The state;
 - c. Counties, municipalities and school districts within this state.
- A.** The agency chief procurement officer shall include the bid security requirements of A.R.S. § 41-2573 in the solicitation.
- B.** If an offeror fails to submit the bid security required by A.R.S. § 41-2573 with the offer, the agency chief procurement officer shall reject the offer.
- C.** The offeror shall submit bid security in one of the following forms:
1. An annual or one-time surety bond executed solely by a surety company or companies authorized to transact surety business in this state, issued by the Director of the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format as prescribed by A.R.S. § 41-2573 and R2-7-505; or
 2. A certified or cashier check.
- D.** The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
1. Only one offer is received and there is not sufficient time to re-solicit;
 2. The amount of the bid security submitted, although less than the amount required by the solicitation, is equal to or

Notices of Proposed Rulemaking

greater than the difference between the apparent low offer and the next higher acceptable offer; or

3. The bid security is inadequate as a result of correcting or modifying an offer in accordance with R2-7-B310, if the offeror increases the amount of the security to required limits within two days after notification.

E. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, shall determine if the bid security may be released without penalty under § 41-2573(E).

R2-7-507. ~~Conditions for Use of Substitute Security~~ Offer Mistakes Discovered After Offer Opening and Before Award

A. ~~A contractor may submit substitute security to replace contract payment retention if:~~

1. ~~The use of substitute security is requested of the Director for work performed under the contract;~~
2. ~~The substitute security is submitted prior to each progress payment in an amount of no less than 10% of each progress payment or once in an amount no less than 10% of the total contract amount;~~
3. ~~The interest earned on such security shall accrue to the benefit of the contractor but shall be retained until the procurement officer has approved completion and acceptance of all work to be performed under the contract;~~
4. ~~The term of such security shall not mature until after the estimated contract completion date;~~
5. ~~The security shall mature no later than one year after the estimated contract completion date; and~~
6. ~~The substitute security shall not be released without written approval by procurement officer.~~

B. ~~A contractor may submit a single substitute security for more than one project provided that:~~

1. ~~The amount of such security is no less than 10% of the aggregate amount of all contracts or all progress payments;~~
2. ~~The Director determines that such single substitute security is advantageous to the state; and~~
3. ~~Such security complies with the requirements of subsection (A) of this rule.~~

A. If an apparent mistake, relevant to the award determination is discovered after offer opening and before award, the agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:

1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:

1. Explanation of the mistake and any other relevant information;
2. A request for correction including the corrected offer or a request for withdrawal; and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.

C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.

D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.

F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

R2-7-508. ~~Repeated Performance and Payment Bonds~~

A. The agency chief procurement officer shall ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. § 41-2574.

B. The contractor shall submit to the state the performance bond and the payment bond upon request of the agency chief procurement officer. If a contractor fails to deliver the required performance bond or payment bond by the designated date, the contractor's offer shall be rejected, its bid security shall be enforced, and award of the contract shall be made as prescribed in this Chapter.

R2-7-509. ~~Procurement of Specified Professional Services~~ Conditions for Use of Substitute Security in Lieu of Retention

A. Annual statement of qualifications and performance data. Firms desiring to provide specified professional services to the state may submit annually to the State Procurement Office a statement of qualifications and performance data which shall include, but not be limited to, the following:

1. The education, training, and qualifications of members of the firm and key employees;
2. An executed United States General Services Administration Standard Form 254;

Notices of Proposed Rulemaking

- 3. Any other pertinent information requested by the procurement officer.
- B.** Firms may amend statements of qualifications and performance by filing a new statement.
- C.** The Director shall publish an informational brochure, which shall be available in the State Procurement Office, to assist firms desiring to provide specified professional services.

A contractor may submit substitute security to replace contract payment retention if:

- 1. The contractor requests the use of substitute security prior to the first progress payment;
- 2. The contractor submits an invoice with each progress payment in an amount of no less than 10% of the progress payment, or the contractor submits an invoice once at the beginning of the project in an amount no less than 5% of the total contract amount;
- 3. The interest earned on such security shall accrue to the benefit of the contractor but shall be retained by the contractor until the agency chief procurement officer has approved completion and acceptance of all work to be performed under the contract; and
- 4. The contractor shall ensure that the date of maturity of the security shall be after the estimated contract completion date, but no later than one year after the estimated contract completion date.

R2-7-510. ~~Public Notice of Specified Professional Services~~ The Form of Substitute Security in Lieu of Retention

- A.** ~~Prior to public notice of the need for specified professional services, the head of the using agency shall determine in writing that the services to be acquired are services defined in A.R.S. § 41-2571 and may recommend that the services be obtained pursuant to rule R2-7-514 or R2-7-515.~~
- B.** ~~Notice of need for specified professional services shall be given by the procurement officer pursuant to R2-7-313.~~ Such notice shall be issued not less than 14 days in advance of when responses must be received. The notice shall contain a statement of the services required that adequately describes the project and specifies how a solicitation containing specific information on the project may be obtained.
- C.** ~~A request for proposals or request for supplemental statements that describes the state's project requirements, shall be issued to all firms responding to the public notice. Notice of any pre-proposal conference and the criteria to be used in selecting firms shall be included in the request.~~

If the conditions identified under R2-7-506 are met, the agency chief procurement officer shall accept a substitute security from a contractor in the form of one of the following:

- 1. An assignment of time certificates of deposit by financial institutions licensed by this state;
- 2. Share certificates of a saving and loan institution or credit union authorized to transact business in this state; or
- 3. Security issued or guaranteed as to principal and interest by:
 - a. The United States;
 - b. The state; or
 - c. Counties, municipalities and school districts within this state.

R2-7-511. ~~Specified Professional Services Selection Committee~~ Individual Job Order Contracting

- A.** ~~If a contract for specified professional services is expected to exceed the amount established by A.R.S. § 41-2535, the head of a purchasing agency shall designate an appropriate selection committee. The selection committee shall be comprised of an uneven number and not less than three members who shall serve at the pleasure of the head of the purchasing agency. Selection committee members shall include:~~
 - 1. ~~The procurement officer to serve as chairman;~~
 - 2. ~~A representative of the using agency;~~
 - 3. ~~A person registered in one of the professions involved in the proposed project;~~
 - 4. ~~If the estimated project cost is expected to exceed \$2,000,000, a non-state employee registered in one of the professions involved in the proposed project.~~
 - 5. ~~Such other members as the head of a purchasing agency shall deem appropriate.~~
- B.** ~~The selection committee shall evaluate:~~
 - 1. ~~Annual statement of qualifications and performance data of those firms responding to the request;~~
 - 2. ~~Proposals or supplemental statements.~~
- C.** ~~No person serving on the selection committee shall receive any direct or indirect benefit from the project under consideration.~~
- A.** The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost \$1,000,000 or less.
- B.** An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:
 - 1. The agency chief procurement officer obtains a cost estimate for the job order, prior to obtaining a cost proposal from the job order contractor; and
 - 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state prior to awarding a job order.

Notices of Proposed Rulemaking

- C.** When authorized by the state procurement administrator, an agency chief procurement officer may use job order contracting for individual job orders estimated to cost between \$250,000 - \$1,000,000, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in Title 32, Chapter 1, Article 1 prior to requesting a cost proposal from the job order contractor; and
 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state prior to awarding a job order.
- D.** The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
- E.** The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 only with authorization from the state procurement administrator.
- F.** Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated/final costs and the reasons the award is in the best interests of the state.

R2-7-512. Cancellation or Rejection of the Solicitation Repealed

The solicitation may be cancelled or proposals rejected in accordance with R2-7-350, R2-7-351, R2-7-352 and R2-7-353.

R2-7-513. Selection Committee Evaluation Repealed

- A.** ~~To the extent possible, the selection committee shall, when using the single negotiated fee method pursuant to R2-7-514 select no fewer than three firms; or, when using the multiple fee proposals method pursuant to R2-7-515, select no fewer than five firms as being professionally and technically qualified. These firms shall be evaluated to determine each firm's:~~
- ~~1. Capabilities and qualifications for performing the contract; and~~
 - ~~2. Methods of approach.~~
- B.** ~~The selection committee shall prepare a memorandum of the selection process which indicates how the evaluation criteria were applied to determine the ranking of the three most qualified firms.~~

R2-7-514. Single Negotiated Fee Method of Award Repealed

- A.** ~~The procurement officer shall negotiate a contract with the most qualified firm for the required services at compensation determined in writing to be fair and reasonable to the state. Contract negotiations shall be directed toward:~~
- ~~1. Making certain that the firm has a clear understanding of the scope of the work, specifically, the essential requirements involved in providing the required services;~~
 - ~~2. Determining that the firm will make available the necessary personnel and facilities to perform the services within the required time; and~~
 - ~~3. Agreeing upon compensation that is fair and reasonable, taking into account the estimated value, scope, complexity, and nature of the required services.~~
- B.** ~~The firm selected for award shall submit and certify cost and pricing data pursuant to A.R.S. § 41-2543.~~
- C.** ~~Failure to negotiate with the most qualified firm~~
- ~~1. If fair and reasonable compensation, contract requirements, and contract documents cannot be agreed upon with the most qualified firm, the procurement officer shall advise the firm in writing of the termination of negotiations.~~
 - ~~2. The procurement officer shall negotiate with the next most qualified firm in sequence or cancel the solicitation.~~
- D.** ~~Written notice of the award shall be sent to the firm with whom the contract is successfully negotiated. Each firm with whom discussions were held shall be notified of the award. Notice of award shall be made available to the public.~~
- E.** ~~After award of the contract, a memorandum setting forth the principal elements of the negotiation shall be prepared by the procurement officer. Such memorandum shall contain sufficient detail to reflect the significant considerations controlling price and the other terms of the contract. Such memorandum shall be included in the procurement file and be available to the public upon request.~~

R2-7-515. Multiple Fee Proposal Method of Award Repealed

- A.** ~~The director or head of a purchasing agency shall select a professional architect, engineer, land surveyor, landscape architect, assayer or geologist, as appropriate, to prepare and seal a scope of services.~~
- B.** ~~After determination of the three firms deemed to be the most highly qualified, the selection committee shall issue a request for the fee proposal to such firms.~~
- C.** ~~Firms shall be afforded fair and equal treatment with respect to any opportunity for discussions and revisions of fee proposals. The procurement officer shall establish procedures and schedules for conducting discussions. If during discussions there is a need for any substantial clarification or change in the scope of services, it shall be amended to incorporate such clarification or change. Disclosure of any information derived from competing fee proposals is prohibited. Any substantial oral clarification of a fee proposal shall be reduced to writing by the offeror. The procurement officer shall keep a record of the date, time, place, purpose, and persons in attendance at such meetings.~~
- D.** ~~The procurement officer shall establish a common date and time for the submission of final offers. Final offers shall be submitted only once, provided, however, the Assistant Director for Facilities Management may make a written determination that it is advantageous to the state to conduct additional discussions or change the state's requirements and require~~

Notices of Proposed Rulemaking

another submission of final offers. Otherwise, no discussions of or changes in the final offers shall be allowed prior to selection for award. Firms shall also be informed that if they do not submit a notice of withdrawal or another final offer, their immediate previous offer will be construed as their final offer.

~~E. Notice of award shall be made in accordance with R2-7-514(D) and (E).~~

ARTICLE 6. CONTRACT CLAUSES

R2-7-601. Standard Terms and Conditions Contract Clauses

~~State governmental units that have been delegated procurement authority by the Director shall use as standard terms and conditions in contracts for materials, services or construction clauses approved by the Director.~~

The agency chief procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the state's interests are addressed.

R2-7-602. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency chief procurement officer.

R2-7-603. Change of Name

If a contractor requests to change the name in which it holds a state contract, the agency chief procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

R2-7-604. Contract Change Orders and Amendments

A. The agency chief procurement officer may extend, or authorize options, in a contract provided the price of the extension or option was evaluated under the contractor's original offer.

B. Any contract change order or amendment not covered under subsection (A) that exceeds \$100,000 may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.

C. The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

R2-7-605. Multi-term Contracts

A. With a written determination from state procurement administrator that an extension of time would be advantageous to the state, the agency chief procurement officer may enter into a contract for materials or services for a period exceeding the time identified in A.R.S. § 41-2546(A).

B. The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:
1. The time period requested for the contract;
2. Documentation that the estimated requirements are reasonable and continuing;
3. Documentation that such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

C. The agency chief procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

R2-7-606. Terms and Conditions

A. The state procurement administrator may publish uniform terms and conditions for use in solicitations and contracts issued by a state governmental unit.

B. The state procurement administrator may authorize an agency chief procurement officer to make changes to uniform terms and conditions.

ARTICLE 7. COST PRINCIPLES

R2-7-701. Cost Principles

The cost principles set forth in the Code of Federal Regulations, 48 CFR Chapter 1, Subchapter e, Part 31, (October 1, 1991 September 2001) excluding later amendments and editions, on file with the Secretary of State and incorporated by this reference, shall be used to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions that provide for the reimbursement of costs. This document is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

Notices of Proposed Rulemaking

R2-7-702. Determination of Fair and Reasonable Price

- A.** For contracts or contract modifications that exceed \$100,000, the agency chief procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
 2. Price is supported by an established catalog or market prices;
 3. Price is set by law or rule; or
 4. Price is supported by relevant, historical price data.
- B.** The agency chief procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The agency chief procurement officer cannot determine the price is fair and reasonable based on the criteria in sub-section (A) of this Section; or
 2. The agency chief procurement officer determines in writing that it is in the best interest of the state regardless of the amount of the contract or contract modification.
- C.** The agency chief procurement officer shall submit a request to the state procurement administrator to waive the requirement for submission of cost or pricing data to the state procurement administrator if the proposed contract or contract modification exceeds \$100,000. The request shall be in writing and state the reasons for the waiver.
- D.** The state procurement administrator shall either:
1. Issue written approval of the request for waiver;
 2. Request additional information from the agency chief procurement officer upon which to base a decision; or
 3. Deny the request.

R2-7-703. Submission and Certification of Cost or Pricing Data

- A.** The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the agency chief procurement officer.
- B.** The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C.** The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror or contractor's knowledge and belief as of a date mutually determined with the agency chief procurement officer.

R2-7-704. Refusal to Submit Cost or Pricing Data

- A.** If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the agency chief procurement officer may reject the offer.
- B.** If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the agency chief procurement officer may:
1. Reject the contract modification; or
 2. Set the amount of the contract modification subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

R2-7-705. Defective Cost or Pricing Data

- A.** The agency chief procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B.** The agency chief procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C.** The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under Article 9 of this Chapter. The price, as adjusted by the agency chief procurement officer, shall remain in effect until any claim is settled or resolved under Article 9 of the Chapter.

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES

R2-7-901. Definitions Repealed

In this Article, unless the context otherwise requires:

- ~~1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. It may also include persons doing business under a variety of names, or where there is a parent-subsidary relationship between persons.~~
- ~~2. "Debarment" means an action taken by the Director under R2-7-925 to prohibit a person from participating in state procurements.~~
- ~~3. "Filed" means delivery to the procurement officer or to the Director, whichever is applicable. A time/date stamp affixed to a document by the office of the procurement officer or the Director, whichever is applicable, shall be deter-~~

Notices of Proposed Rulemaking

minative of the time of delivery for purposes of filing.

4. "Governing instruments" means those legal documents that establish the existence of an organization and define its powers including articles of incorporation or association, constitution, charter and by-laws.
5. "Interested party" means an actual or prospective bidder or offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract or by the failure to award a contract. Whether an actual or prospective bidder or offeror has an economic interest will depend upon the circumstances of each case.
6. "Suspension" means an action taken by the Director under R2-7-930 temporarily disqualifying a person from participating in state procurements.

R2-7-902. Resolution of Bid Protests Repealed

The procurement officer of the contracting agency issuing the solicitation shall have the authority to resolve bid protests. Appeals from the decisions of the procurement officer may be made to the Director pursuant to R2-7-909.

R2-7-903. Filing of a Protest Repealed

- A.** Any interested party may protest a solicitation issued by the state, or the proposed award or the award of a state contract.
- B.** Content of protest. The protest shall be in writing and shall include the following information:
 1. The name, address and telephone number of the protester;
 2. The signature of the protester or its representative;
 3. Identification of the purchasing agency and the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 5. The form of relief requested.

R2-7-904. Time for Filing Protests Repealed

- A.** Protests concerning improprieties in a solicitation
 1. Protests based upon alleged improprieties in a solicitation that are apparent before the bid opening shall be filed before bid opening. Protests based upon alleged improprieties in a solicitation that are apparent before the closing date for receipt of initial proposals shall be filed before the closing date for receipt of initial proposals.
 2. In procurements requesting proposals, protests concerning improprieties that do not exist in the initial solicitation but that are subsequently incorporated into the solicitation shall be filed by the next closing date for receipt of proposals following the incorporation.
- B.** In cases other than those covered in subsection (A) of this rule, protests shall be filed within ten days after the protester knows or should have known the basis of the protest, whichever is earlier.
- C.** The protester shall give notice of the protest to the State Procurement Administrator within a reasonable time.
- D.** If the protester shows good cause, the procurement officer of the contracting agency may consider any protest that is not filed timely.
- E.** The procurement officer shall immediately give notice of the protest to all interested parties.

R2-7-905. Stay of Procurements During the Protest Repealed

If a protest is filed before the award of a contract or before performance of a contract has begun, the award may be made or contract performance may proceed, unless the State Procurement Administrator stays the contract award or performance on determining in writing that there is a reasonable probability that the protest will be sustained or that stay is not contrary to the best interests of the state.

R2-7-906. Confidential Information Repealed

- A.** Material submitted by a protester shall not be withheld from any interested party except to the extent that the withholding of information is permitted or required by law as determined pursuant to A.R.S. § 41-2533(D) or 41-2534(D) and R2-7-104.
- B.** If the protester believes the protest contains material that should be withheld, a statement advising the procurement officer of this fact shall accompany the protest submission in accordance with R2-7-104.

R2-7-907. Decision by the Procurement Officer Repealed

- A.** The procurement officer of the purchasing agency shall issue a written decision within 14 days after a protest has been filed pursuant to R2-7-903. The decision shall contain an explanation of the basis of the decision and a statement that the decision may be appealed to the Director of the Department of Administration within five days from receipt of the decision.
- B.** The procurement officer shall furnish a copy of the decision to the protester, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- C.** The time limit for decisions set forth in subsection (A) of this rule may be extended by the Director for good cause for a reasonable time not to exceed 30 days. The Director shall notify the protester in writing that the time for the issuance of a decision has been extended and the date by which a decision will be issued.

Notices of Proposed Rulemaking

- ~~D.~~ If the procurement officer fails to issue a decision within the time limits set forth in subsection (A) or (C) of this rule, the protester may proceed as if the procurement officer had issued an adverse decision.

R2-7-908. Remedies Repealed

- ~~A.~~ If the procurement officer of the purchasing agency sustains the protest in whole or part and determines that a solicitation, proposed contract award, or contract award does not comply with the procurement statutes and regulations, the officer shall implement an appropriate remedy.
- ~~B.~~ In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the procurement system, the good faith of the parties, the extent of performance, costs to the government, the urgency of the procurement, and the impact of the relief on the purchasing agency's mission.
- ~~C.~~ An appropriate remedy may include one or more of the following:
- ~~1. Decline to exercise an option to renew under the contract;~~
 - ~~2. Terminate the contract;~~
 - ~~3. Amend the solicitation;~~
 - ~~4. Issue a new solicitation;~~
 - ~~5. Award a contract consistent with procurement statutes and regulations; or~~
 - ~~6. Such other relief as is determined necessary to ensure compliance with procurement statutes and regulations.~~

R2-7-909. Appeals to the Director Repealed

- ~~A.~~ An appeal from a decision entered or deemed to be entered by the procurement officer shall be filed with the Director within five days after the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
- ~~B.~~ Content of appeal. The appeal shall contain:
- ~~1. The information set forth in R2-7-903(B), including the identification of protected information in the manner set forth in R2-7-906;~~
 - ~~2. A copy of the decision of the procurement officer; and~~
 - ~~3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.~~

R2-7-910. Notice of Appeal Repealed

- ~~A.~~ The procurement officer shall immediately give notice of the appeal to interested parties.
- ~~B.~~ The Director shall upon request furnish copies of the appeal to those named in subsection (A) of this rule subject to the provisions of R2-7-906.

R2-7-911. Stay of Procurement During Appeal Repealed

~~If a stay was issued pursuant to R2-7-905, the filing of an appeal shall automatically continue the stay unless the Director makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the state.~~

R2-7-912. Agency Report Repealed

- ~~A.~~ The procurement officer shall file a complete report on the appeal with the Director within ten days after the date the appeal is filed. At the same time, the procurement officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested, and to any interested parties who have responded to the notice given pursuant to R2-7-910(B). The report shall contain copies of:
- ~~1. The appeal;~~
 - ~~2. The bid or proposal submitted by the appellant;~~
 - ~~3. The bid or proposal of the firm that is being considered for award;~~
 - ~~4. The solicitation, including the specifications or portions relevant to the appeal;~~
 - ~~5. The abstract of bids or proposals or relevant portions;~~
 - ~~6. Any other documents that are relevant to the protest; and~~
 - ~~7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.~~
- ~~B.~~ Extension for filing of report
- ~~1. The procurement officer may request in writing an extension of the time period setting forth the reason for extension.~~
 - ~~2. The Director's determination on the request shall be in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The Director shall notify the procurement officer and the appellant in writing that the time for the submission of the report has been extended and the date by which the report will be submitted.~~
- ~~C.~~ Comments on report
- ~~1. The appellant shall file comments on the agency report with the Director within seven days after receipt of the report.~~

Notices of Proposed Rulemaking

Copies of the comments shall be provided by the appellant to the procurement officer of the purchasing agency and other interested parties.

2. The Director may grant an extension on the time period to file comments pursuant to a written request made by the appellant within the period set forth in paragraph (C)(1) of this rule stating the reason an extension is necessary. The Director's determination on the request shall be in writing, state the reasons for the determination, and, if the extension is granted, set forth a new date for the filing of comments. The Director shall notify the procurement officer of any extension.

R2-7-913. Dismissal Before Hearing Repealed

The Director shall dismiss, upon a written determination, an appeal before scheduling a hearing if:

1. The appeal does not state a valid basis for protest; or
2. The appeal is untimely pursuant to R2-7-909(A).

R2-7-914. Hearing Repealed

Hearings on appeals of bid protest decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

R2-7-915. Remedies Repealed

If the Director sustains the appeal in whole or part and determines that a solicitation, proposed award, or award does not comply with procurement statutes and regulations, remedies shall be implemented pursuant to R2-7-908.

R2-7-916. Contract Claims Repealed

- A. Claims under contracts shall be filed with the procurement officer administering the contract within 12 months after claim arises.
- B. The procurement officer administering the contract shall have the authority to settle and resolve contract claims subject to subsection (C) of this rule. Appeals from decisions of the procurement officer may be made to the Director pursuant to R2-7-919.
- C. The settlement or resolution of a claim in excess of \$10,000 requires the prior written approval of the State Procurement Administrator.

R2-7-917. Procurement Officer's Decision Repealed

- A. If a claim cannot be resolved by mutual agreement, the procurement officer shall, upon a written request by the contractor for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B. Final decision. The procurement officer shall furnish a copy of the decision to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The decision shall include:
 1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the procurement officer's decision, with supporting rationale;
 5. A paragraph substantially as follows:
"This is the final decision of the procurement officer. This decision may be appealed to the Director of the Department of Administration. If you appeal, you must file a written notice of appeal with the Director within five days from the date you receive this decision".

R2-7-918. Issuance of a Timely Decision Repealed

- A. The time limit for decisions set forth in R2-7-917(A) may be extended for good cause for a reasonable time not to exceed 30 days. The procurement officer shall notify the contractor in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- B. If the procurement officer fails to issue a decision within 60 days after the request is filed or within the time prescribed under subsection (A) of this rule, the contractor may proceed as if the procurement officer had issued an adverse decision.

R2-7-919. Appeals and Reports to the Director Repealed

- A. An appeal from a final decision of a procurement officer on a claim shall be filed with the Director within five days from the date the decision is received. The appellant shall also file a copy of the appeal with the procurement officer.
- B. Content of appeal. The appeal shall contain a copy of the decision of the procurement officer and the precise factual or legal error in the decision of the procurement officer from which an appeal is taken.
- C. The procurement officer shall file a complete report on the appeal with the Director within ten days from the date the appeal is filed. At the same time, the procurement officer shall furnish a copy of the report to the appellant by certified mail, return receipt requested. The report at a minimum shall contain a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

Notices of Proposed Rulemaking

R2-7-920. Controversies Involving State Claims Against a Contractor Repealed

All claims asserted by the state against a contractor that are not resolved by mutual agreement shall promptly be referred by the procurement officer to the Director for a hearing without regard to the procedures set forth in these rules R2-7-916 through R2-7-919.

R2-7-921. Hearing Repealed

Hearings on appeals of claims decisions shall be conducted as contested cases pursuant to these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

R2-7-922. Authority to Debar or Suspend Repealed

The Director has the sole authority to debar or suspend a person from participating in state procurements.

R2-7-923. Initiation of Debarment Repealed

Upon receipt of information concerning a possible cause for debarment, the Director shall investigate the possible cause. If the Director has a reasonable basis to believe that a cause for debarment exists, the Director may propose debarment under R2-7-925.

R2-7-924. Period of Debarment Repealed

- A.** The period of time for a debarment shall not exceed three years from the date of the debarment determination.
- B.** If debarment is based solely upon debarment by another governmental agency, the period of debarment may run concurrently with the period established by that other debarring agency.

R2-7-925. Notice Repealed

If the Director proposes debarment, the Director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, of the proposed debarment and that a hearing shall be scheduled in accordance with this Article.

R2-7-926. Notice to Affiliates Repealed

- A.** If the Director proposes to debar an affiliate, the affiliate shall have a right to appear in any hearing on the proposed debarment to show mitigating circumstances.
- B.** The affiliate shall in writing advise the Director within 30 days of receipt of the notice under R2-7-925 of its intention to appear under subsection (A) of this rule. Failure to provide written notice of appearance within the 30-day period shall be a waiver of the right to appear in the hearing.

R2-7-927. Imputed Knowledge Repealed

- A.** Improper conduct may be imputed to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B.** The improper conduct of a person or its affiliate having a contract with a contractor may be imputed to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

R2-7-928. Reinstatement Repealed

- A.** The Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- B.** Any debarred person may request reinstatement by submitting a petition to the Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C.** The Director may require a hearing on the request for reinstatement.
- D.** The decision on reinstatement shall be in writing, be made within seven days after the request for a hearing is filed and specify the factors on which it is based.
- E.** Decisions on reinstatement requests are not subject to judicial appeal.

R2-7-929. Limited Participation Repealed

The Director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

R2-7-930. Suspension Repealed

- A.** If adequate grounds for debarment exist, the Director may suspend a person from receiving any award in accordance with the procedures in R2-7-932.
- B.** The Director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

R2-7-931. Period and Scope of Suspension Repealed

- A.** Unless otherwise agreed to by the parties, the period of suspension shall not be more than 30 days without satisfying the

Notices of Proposed Rulemaking

notice requirements of R2-7-932.

- ~~B.~~ For purpose of suspension, a person's conduct may be imputed to an affiliate or another person in accordance with R2-7-927.

R2-7-932. ~~Notice, Hearing, Determination, and Appeal Repealed~~

- ~~A.~~ The Director shall notify the person suspended by personal service or certified mail, return receipt requested.

- ~~B.~~ The notice of suspension shall state:

- ~~1.~~ The basis for suspension;
- ~~2.~~ The period, including dates, of the suspension;
- ~~3.~~ That bids or proposals shall not be solicited or accepted from the person and, if received, will not be considered; and
- ~~4.~~ That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the Director within seven days after receipt of the notice.

- ~~C.~~ If a suspended party requests a hearing, the hearing officer shall arrange for a prompt hearing unless the Attorney General determines that a hearing at such time is likely to jeopardize an investigation. In no case shall the hearing be delayed longer than six months after notice of suspension.

- ~~D.~~ A hearing requested under this Section shall be conducted, to the extent practicable, in accordance with these rules and the Arizona Administrative Procedure Act (Article 1, Chapter 6, Title 41, Arizona Revised Statutes).

R2-7-933. ~~Master List Repealed~~

- ~~A.~~ The Director shall maintain a master list of debarments, suspension, and voluntary exclusions under this Article.

- ~~B.~~ The master list shall show as a minimum the following information:

- ~~1.~~ The names and vendor number of those persons whom the state has debarred or suspended under this Article;
- ~~2.~~ The basis of authority for the action;
- ~~3.~~ The period of debarment or suspension, including the expiration date; and
- ~~4.~~ The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency.

- ~~C.~~ The master list shall include a separate action listing persons voluntarily excluded from participation in state contracts.

R2-7-934. ~~Hearing Procedures Repealed~~

- ~~A.~~ If a hearing is required or permitted under these rules, the Director shall act as a hearing officer or appoint a hearing officer. The Director may also direct the parties to engage in settlement negotiations or alternative disputes resolution procedures before scheduling a hearing.

- ~~B.~~ If a hearing is required or permitted under these rules, the hearing officer shall arrange for a prompt hearing and notify the parties in writing of the time and place of the hearing.

- ~~C.~~ The hearing shall be conducted in an informal manner without formal rules of evidence or procedure.

- ~~D.~~ The hearing officer may:

- ~~1.~~ Hold pre-hearing conferences to settle, simplify, or identify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding;
- ~~2.~~ Require parties to state their positions concerning the various issues in the proceeding;
- ~~3.~~ Require parties to produce for examination those relevant witnesses and documents under their control;
- ~~4.~~ Rule on motions and other procedural items on matters pending before such officer;
- ~~5.~~ Regulate the course of the hearing and conduct of participants;
- ~~6.~~ Establish time limits for submission of motions or memoranda;
- ~~7.~~ Impose appropriate sanctions against any person failing to obey an order under these procedures, which may include:
 - ~~a.~~ Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
 - ~~b.~~ Excluding all testimony of an unresponsive or evasive witness; and
 - ~~c.~~ Expelling person from further participation in the hearing;
- ~~8.~~ Take official notice of any material fact not appearing in evidence in the record, if the fact is among the traditional matters of judicial notice; and
- ~~9.~~ Administer oaths or affirmations; and
- ~~10.~~ Issue a stay of contract award or contract performance.

- ~~E.~~ A transcribed record of the hearing shall be made available at cost to the requesting party.

R2-7-935. ~~Recommendation by the Hearing Officer Repealed~~

- ~~A.~~ The hearing officer shall make a recommendation to the Director based on the evidence presented. The recommendation shall include findings of fact and conclusions of law.

- ~~B.~~ The Director may affirm, modify, or reject the hearing officer's recommendation in whole or in part, may remand the matter to the hearing officer with instructions, or make any other appropriate disposition.

Notices of Proposed Rulemaking

R2-7-936. Final Decision by the Director Repealed

A decision by the Director shall be final. The decision shall be sent within 20 days after the conclusion of the hearing to all parties by personal service or certified mail, return receipt requested. The decision shall state that any party adversely affected may within ten days request a rehearing with the Director.

R2-7-937. Rehearing of Director's Decision Repealed

- A.** Any party, including a procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision specifying the particular grounds:
1. The request for rehearing shall be filed with the Director within ten days after receipt of the decision and shall include any supporting affidavits.
 2. The request shall be clearly designated as a "Request for Rehearing".
 3. The Director shall within five days after the request is filed notify interested parties of the request by personal service or certified mail, return receipt requested.
- B.** An interested party may within ten days after receipt of the notice file a response including opposing affidavits.
- C.** Any argument not raised in the request or in a response is waived.
- D.** The Director may require the filing of written briefs and may provide for oral argument.
- E.** A rehearing of the decision may be granted for any of the following causes:
1. Irregularity in the proceedings before the Director or an abuse of discretion by the Director, depriving the requesting party of a fair hearing;
 2. Misconduct of the Director, his staff or the hearing officer or any party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other error of law occurring at the hearing;
 7. A showing that the decision is not justified by the evidence or is contrary to law.
- F.** The Director's decision concerning a request for rehearing shall be in writing and shall state the basis of the decision. A decision granting a rehearing shall specify with particularity the grounds on which the rehearing is granted, and the date, time and place of the rehearing. The rehearing shall cover only those matters specified in the decision.
- G.** The Director, within the time for filing a request for rehearing under this rule, may on his own initiative order a rehearing of his decision for any reason for which he might have granted a rehearing on request of a party.

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

R2-7-A901. Protest of Solicitations and Contract Awards

- A.** Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B.** The protestor shall file the protest in writing to the agency chief procurement officer, with a copy to the state procurement administrator, and shall include the following information:
1. The name, address and telephone number of the protestor;
 2. The signature of the protestor or the protestor's representative;
 3. Identification of the purchasing agency and the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 5. The form of relief requested.
- C.** If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the protestor shall file the protest before the offer due date and time.
- D.** In cases other than those covered in subsection (C), the protestor shall file the protest within 10 days after the agency chief procurement officer makes the procurement file available for public inspection.
- E.** The protestor may submit a written request to the agency chief procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D), and shall set forth good cause as to the specific action or inaction of the purchasing agency that resulted in the protestor being unable to submit the protest within the 10 days. The agency chief procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
- F.** If the protestor shows good cause, the agency chief procurement officer may consider a protest that is not filed timely.
- G.** The agency chief procurement officer shall immediately give notice of a protest to all offerors.

R2-7-A902. Stay of Procurements During the Protest

- A.** If a protest is filed before solicitation due date, before the award of a contract, or before performance of a contract has begun, the state procurement administrator shall make a written determination to either:
1. Proceed with the award or contract performance; or

2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.

B. The state procurement administrator shall provide the protestor, agency chief procurement officer, and other interested parties with a copy of the written determination.

C. The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state. The agency chief procurement officer shall notify the state procurement administrator and all interested parties of the stay in writing.

R2-7-A903. Resolution of Solicitation and Contract Award Protests

A. The agency chief procurement officer has the authority to resolve a protest.

B. The agency chief procurement officer shall issue a written decision within 14 days after a protest has been filed under R2-7-A901. The decision of the agency chief procurement officer shall contain the basis for the decision and a statement that the decision may be appealed to the Director within 30 days from receipt of the decision.

C. The agency chief procurement officer shall furnish the decision to the protestor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator and the Director.

D. The agency chief procurement officer may submit a written request to the Director for an extension of the time limit for decisions under subsection B. The Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the decision, not to exceed an additional 30 days. The Director shall notify the agency chief procurement officer, the protestor, and the state procurement administrator in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

E. If the agency chief procurement officer fails to issue a decision within the time limits set forth in this Article, the protestor may proceed as if the agency chief procurement officer had issued an adverse decision.

R2-7-A904. Remedies by the Agency Chief Procurement Officer

A. If the agency chief procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the agency chief procurement officer shall implement an appropriate remedy.

B. In determining an appropriate remedy, the agency chief procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency;
2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
3. The good faith of the parties;
4. The extent of performance;
5. The costs to the state;
6. The urgency of the procurement;
7. The impact on the agency's mission; and
8. Other relevant issues

C. An agency chief procurement officer may implement any of the following appropriate remedies:

1. Decline to exercise an option to renew under the contract;
2. Terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with procurement statutes and regulations; or
6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

R2-7-A905. Appeals to the Director

A. A protestor may appeal the decision entered or deemed to be entered by the agency chief procurement officer with the Director within 30 days after the date the decision is received or deemed received under R2-7-A903. At the same time, the protestor shall file a copy of the appeal with the agency chief procurement officer and the state procurement administrator.

B. The protestor shall file the appeal in writing and shall include the following information:

1. The information prescribed in R2-7-A901(B) including the identification of confidential information under R2-7-103;
2. A copy of the decision of the agency chief procurement officer; and
3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.

C. The Director may consider any appeal that is not filed timely if:

1. The protestor shows good cause; or
2. The Director finds there is good cause.

Notices of Proposed Rulemaking

R2-7-A906. Notice of Appeal to the Director

- A. The agency chief procurement officer shall promptly give notice of the appeal to all offerors.
- B. The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R2-7-103.

R2-7-A907. Stay of Procurement During Appeal to Director

- A. If a stay was issued under R2-7-A902, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the state.
- B. Following a review of the agency chief procurement officer's or the state procurement officer's decision and the protestor's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.

R2-7-A908. Agency Report

- A. The agency chief procurement officer shall file a complete report on the appeal with the Director and the state procurement administrator within 14 days after the date the appeal is filed, at the same time furnishing a copy of the report to the protestor. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
 - 1. The appeal;
 - 2. The offer submitted by the protestor;
 - 3. The offer of the firm that is being considered for award;
 - 4. The solicitation, including the specifications or portions relevant to the appeal;
 - 5. The abstract of offers or relevant portions;
 - 6. Any other documents that are relevant to the protest; and
 - 7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.
- B. The agency chief procurement officer may submit a written request to the Director for an extension of the time period for filing the report as prescribed in R2-7-A908(A), identifying the reason for extension. The Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The Director shall notify the agency chief procurement officer, the state procurement administrator, and the protestor in writing that the time for the submission of the report has been extended and the date by which the report must be submitted.
- C. The protestor shall file comments on the agency report with the Director within 10 days after receipt of the report. The protestor shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- D. The protestor may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The Director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The Director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

R2-7-A909. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination or an award does not comply with procurement statutes and regulations, the Director shall implement remedies as provided in R2-7-A904.

R2-7-A910. Dismissal Before Hearing

- A. The Director shall dismiss, upon a written determination, an appeal in whole or in part before scheduling a hearing if:
 - 1. The appeal does not state a valid basis for protest;
 - 2. The appeal is untimely as prescribed under R2-7-A905; or
 - 3. The appeal attempts to raise issues not raised in the protest.
- B. The Director shall notify the protestor, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.

R2-7-A911. Hearing

The Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. § 41-1092.07.

PART B. CONTRACT CLAIMS

R2-7-B901. Controversies Involving Contract Claims Against the State

- A. A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after claim arises. The claim shall include the following:
 - 1. The name, address, and telephone number of the claimant;
 - 2. The signature of the claimant or its representative;

Notices of Proposed Rulemaking

3. Identification of the purchasing agency and the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

B. The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

R2-7-B902. Agency Chief Procurement Officer's Decision

A. If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.

B. The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:

1. A description of the claim;
2. A reference to the pertinent contract provision;
3. A statement of the factual areas of agreement or disagreement;
4. A statement of the agency chief procurement officer's decision, with supporting rationale;
5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the Director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the Director within 30 days from the date you receive this decision".

R2-7-B903. Issuance of a Timely Decision

If the agency chief procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

R2-7-B904. Appeals and Reports to the Director

A. The claimant may appeal the final decision of the agency chief procurement officer with the Director within 30 days from the date the decision is received. The claimant shall also file a copy of the appeal with the agency chief procurement officer and the state procurement administrator.

B. The claimant shall file the appeal in writing and shall include the following:

1. A copy of the decision of the agency chief procurement officer;
2. A statement of the factual areas of agreement or disagreement; and
3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.

C. The agency chief procurement officer shall file a complete report on the appeal with the Director and the state procurement administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the agency chief procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

D. The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

R2-7-B905. Controversies Involving State Claims Against the Contractor

If the agency chief procurement officer is unable to resolve, by mutual agreement, a claim asserted by the state against a contractor, the agency chief procurement officer shall promptly refer the matter in writing to the Director for resolution under A.R.S. § 41-1092.07. The agency chief procurement officer shall furnish a copy of the claim to the state procurement administrator.

PART C. DEBARMENTS AND SUSPENSIONS

R2-7-C901. Authority to Debar or Suspend

The Director has the sole authority to debar or suspend a person from participating in state procurements under A.R.S. § 41-2613.

R2-7-C902. Initiation of Debarment

Upon receipt of information concerning a possible cause for debarment, the Director shall investigate the possible cause. If the Director has a reasonable basis to believe that a cause for debarment exists, the Director may propose debarment under R2-7-C904.

Notices of Proposed Rulemaking

R2-7-C903. Period of Debarment

- A.** The Director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.
- B.** If debarment is based solely upon debarment by another governmental agency, the Director may establish that the period of debarment is to run concurrently with the period established by that other debarring agency.

R2-7-C904. Notice of Debarment and Hearing

- A.** If debarment is proposed, the Director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that provides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.
- B.** The person proposed for debarment and any affected affiliates shall file a written request for a hearing within ten days of receipt of the Director's notice of proposed debarment.
- C.** The hearing shall be conducted as a contested case under A.R.S. §§ 41-1092.07 and 41-2613.

R2-7-C905. Imputed Knowledge

- A.** The Director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B.** The Director may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

R2-7-C906. Reinstatement

- A.** The Director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- B.** Any debarred person may request reinstatement by submitting a petition to the Director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C.** The Director may require a hearing on the request for reinstatement.
- D.** The Director shall make a written decision on reinstatement within thirty days after the request is filed and specify the factors on which it is based.
- E.** Reinstatement decisions by the Director are not subject to administrative review.

R2-7-C907. Limited Participation

The Director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

R2-7-C908. Suspension

- A.** If the Director determines that reasonable grounds for debarment exist, the Director may suspend a person from receiving any award under R2-7-C911.
- B.** For purposes of suspension, a person's conduct may be attributed to an affiliate or another person under R2-7-C905.
- C.** The Director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

R2-7-C909. Period and Scope of Suspension

Unless otherwise agreed to by the parties, the Director shall not implement a period of suspension of more than 35 days without satisfying the notice requirements of R2-7-C911.

R2-7-C910. Notice, Hearing, Determination, and Appeal

- A.** The Director shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- B.** The notice of suspension shall state:
 - 1. The basis for suspension;
 - 2. The period, including dates, of the suspension;
 - 3. That offers received from the person will not be considered; and
 - 4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the Director within thirty days after receipt of the notice.
- C.** Within 30 days receipt of the notice of suspension, the suspended party may file a written request for hearing with the Director. The appeal shall include the following information:
 - 1. A copy of the decision of the Director; and
 - 2. The precise factual or legal error in the decision from which the appeal is taken.
- D.** The suspension shall be resolved as an appealable agency action under A.R.S. §§ 41-1092.03 and 41-2613.

R2-7-C911. Master List

A. The Director shall maintain a master list of debarments, suspension, and voluntary exclusions under this Article.

B. The master list shall show as a minimum the following information:

1. The names and vendor number of those persons whom the state has debarred or suspended under this Article;
2. The basis of authority for the action;
3. The period of debarment or suspension, including the expiration date;
4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency; and
5. A separate action listing persons voluntarily excluded from participation in state contracts.

PART D. HEARING PROCEDURES

R2-7-D901. Hearings

If a hearing is required or permitted under this Chapter, the Director shall refer the matter to the Office of Administrative Hearings for findings of fact, conclusions of law, and a recommended decision. The Director may also direct the parties to engage in settlement negotiations or alternative disputes resolution procedures before referring the matter for a hearing.

R2-7-D902. Rehearing of Director's Decision

A. Any person, including an agency chief procurement officer, who is aggrieved by the Director's decision may file a written request for rehearing of the decision under A.R.S. § 41-1092.09.

B. The Director, within the time for filing a request for rehearing under this rule, may on their own initiative order a rehearing for any reason for which a rehearing may have been granted on request of a party.

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT

R2-7-1001. Definition Approval to Enter into a Cooperative Purchasing Agreement

"Eligible procurement unit" means a public procurement unit or a nonprofit educational or public health institution.

A. Agency chief procurement officers may use Arizona state contracts without a cooperative purchasing agreement.

B. Agency chief procurement officers shall submit a written request to the state procurement administrator prior to participating in cooperative purchasing agreement with another public procurement unit or group of public procurement units. The written request for approval shall specify the manner which the administering public procurement unit complies with A.R.S. § 41-2634.

C. The state procurement administrator shall either:

1. Issue written approval, with any conditions or restrictions;
2. Request additional information from the state government unit; or
3. Deny the request.

R2-7-1002. ~~Applicability~~ Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer

Agreements entered into pursuant to Article 10 of the Arizona Procurement Code shall be limited to the areas of procurement, warehousing or materials management.

A. An agency chief procurement officer shall ensure that any cooperative purchasing agreement administered for use by other eligible procurement units under A.R.S. § 41-2632 shall provide that:

1. Payment for materials or services and inspection and acceptance of materials or services are the responsibility of the using eligible procurement unit;
2. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise its own rights or remedies;
3. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of that unit. However, the state, as the contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy should it so desire;
4. The eligible procurement unit shall not use an Arizona state contract as a method for obtaining additional concessions or reduced prices for similar material or services; and
5. An agency chief procurement officer may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract.

B. The state procurement administrator may authorize a state governmental unit to establish an Arizona state contract which may be used by designated eligible procurement units.

R2-7-1003. ~~Intergovernmental Procurement Agreements Approval~~ Establishment of a Committee as Required by A.R.S. § 41-2636

All agreements entered into pursuant to Article 10 of the Arizona Procurement Code by the state shall be approved by the State Procurement Administrator.

Notices of Proposed Rulemaking

- A. The Director shall appoint a committee as required by A.R.S. § 41-2636.
- B. The committee shall be comprised of at least seven members, including the committee chair, representing:
 - 1. Arizona Correctional Industries ("ACI");
 - 2. Arizona Industries for the Blind ("AIB");
 - 3. Certified Non-Profit Agencies for Disabled Individuals (CNADI) as defined in A.R.S. § 41-2636(F);
 - 4. Other public procurement units.
- C. The state procurement administrator or the state procurement administrator's designee shall chair the committee.
- D. The committee chair may appoint sub-committees to assist in the evaluation of materials and services under consideration by the committee as a set-aside.
- E. The committee shall meet at least once each fiscal year quarter to report compliance with A.R.S. § 41-1636(E).

R2-7-1004. Cooperative State Purchasing Agreement in Form of a State Requirements Contract Certification as Non-Profit Agency for Disabled Individuals

Any state requirements contract with an eligible procurement unit entered into pursuant to A.R.S. § 41-2642 shall provide that:

- 1. Payment for materials or services and inspection and acceptance of materials or services ordered by the eligible procurement unit under Department contracts shall be the exclusive obligation of such unit;
- 2. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of such unit;
- 3. The Department may terminate without notice any cooperative purchasing agreement if the eligible procurement unit fails to comply with the terms of the contract;
- 4. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise its own rights or remedies;
- 5. The eligible procurement unit shall not use a state contract as a method for obtaining addition concessions or reduced prices for similar material or services; and
- 6. The Department shall provide the eligible procurement unit a list monthly of material and services available from state contracts. An annual fee established by the State Procurement Office and approved by the Director for a copy of such list, plus a fee established by the State Procurement Office for each additional copy, shall be paid by the eligible procurement unit to the Department.
- A. A non-profit organization may request written approval from the committee for certified status as a non-profit agency for disabled individuals for the purpose of being eligible for set-aside contracts by submitting the information identified in A.R.S. § 2636(F).
- B. The committee shall review the information submitted and respond to the requestor in writing by either:
 - 1. Approving the request;
 - 2. Denying the request; or
 - 3. Requesting more information.

R2-7-1005. Informational and Technical Services Application for Approval as Required by A.R.S. § 41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals

The State Procurement Administrator shall develop, maintain and distribute a list of information and technical services available from the State Procurement Office. Such list shall contain the names of any suspended or debarred contractors and shall be distributed to all eligible procurement units that have entered into a cooperative purchasing agreement with the Department.

- A. A non-profit organization requesting certification by the committee as a non-profit agency for disabled individuals shall submit the following written information to the State Procurement Office, attention of the committee chair:
 - 1. Name of organization, address, contact name, and contact information;
 - 2. Description of the non-profit activity center(s);
 - 3. Evidence of the organization's nonprofit status;
 - 4. A statement that the business is operated in accordance with A.R.S. § 41-2636(F);
 - 5. A statement of Occupational Safety and Health Administration compliance; and
 - 6. The signature and title of the responsible party within the applicant's organization.
- B. The committee shall review the submitted application at the next scheduled committee meeting and may do any of the following:
 - 1. Approve the organization as a certified non-profit agency for disabled individuals;
 - 2. Table the application and request additional information; or
 - 3. Decline the application.

R2-7-1006. Establishment of the Committee Approval of Specific Materials and/or Services for Set-Aside Use

- A. The Director shall appoint a Committee to determine under A.R.S. § 41-2636 whether materials or services offered by Arizona Industries for the Blind ("AIB") and Arizona Correctional Industries ("ACI") should be placed on an Arizona state contract for mandatory purchase by state governmental units. The state procurement Administrator or his or her designee shall serve as chairman. Committee members shall serve at the pleasure of the Director.
- B. The chairman may appoint a subcommittee to assist in the evaluation of materials and services under consideration by the

Notices of Proposed Rulemaking

committee:

- A. ACI, AIB, and CNADI shall submit the information required by A.R.S. § 41-2636(B) to the committee to request approval of the material or service for mandatory use. The applicant shall also include the following information:
 - 1. A description of the specific material or service;
 - 2. The pricing offered;
 - 3. Documentation that the pricing offered is fair market pricing; and
 - 4. Information regarding availability.
- B. The committee shall evaluate each offered material or service to determine:
 - 1. The existence and extent of a need within state governmental units for the material or service;
 - 2. The ability to produce and deliver the material or service to meet the reasonable requirements of the state governmental units; and
 - 3. Whether the offered price for the material or service is reasonable.
- C. The committee may:
 - 1. Approve the requested material or service for use as a mandatory set-aside contract;
 - 2. Establish a sub-committee to study and make a recommendation on the request;
 - 3. Request additional information;
 - 4. Deny the request; or
 - 5. Designate the material or service as available for optional use by a state governmental unit or local public procurement unit under A.R.S. § 41-2636(D).

R2-7-1007. ~~Evaluation of Materials and Services~~ Contract Awards Directed by the Committee

- ~~A. For each material or service under consideration by the Committee, AIB or ACI shall submit to the Committee, where appropriate, specifications, production data, and pricing data relating to each material or service for which an Arizona state contract is sought.~~
- B. The Committee shall evaluate each material or service to determine the following:
 - 1. The existence and extent of a need within state governmental units for the material or service;
 - 2. The availability of the material or service from AIB or ACI to meet those needs;
 - 3. That AIB or ACI is generally capable of meeting the reasonable delivery requirements of state governmental units;
 - 4. That the quality of the material or service is substantially equivalent to that available from the private sector; and
 - 5. A reasonable price for the material or service or, if AIB or ACI has established a price, that it is equivalent to the price for a substantially similar material or service available from the private sector.
- A. The State Procurement Office or the agency chief procurement officer designated by the state procurement administrator shall enter into a contract as directed by the committee. Such contracts shall not exceed five years, including any renewal options.
- B. Contracts may be renewed as follows:
 - 1. For mandatory state contracts, if the State Procurement Office makes an initial determination that the criteria set forth in R2-7-1006(B) are no longer being met, it shall refer the matter to the committee for a final determination.
 - 2. The committee may:
 - a. Approve the contract renewal;
 - b. Establish a sub-committee to study and make a recommendation on contract renewal;
 - c. Request additional information;
 - d. Deny the contract renewal; or
 - e. Take other action as may be appropriate.
- C. The State Procurement Office or agency chief procurement officer designated by the state procurement administrator shall take action as directed by the committee.

R2-7-1008. ~~Contract Awards by the Committee~~ Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit

- ~~A. If a majority of the Committee votes that the criteria set forth in R2-7-1007(B) have been met, the State Procurement Office shall enter into an Arizona state contract with AIB or ACI for the material or service.~~
- ~~B. If a majority of the Committee votes that at least the criterion set forth in R2-7-1007(B)(4) has been met, the Committee may direct the State Procurement Office to enter into a contract with AIB or ACI for the material or service from which state governmental units may, but are not required to, purchase.~~
- ~~C. Contracts awarded under this rule shall be for one year with up to three one-year options to renew. If the State Procurement Office, when considering the exercise of an option to renew, makes an initial determination that the criteria set forth in R2-7-1007(B) no longer are being met, the State Procurement Office shall refer the matter to the Committee for a final determination.~~
- ~~D. If a majority of the Committee determines that the criteria set forth in R2-7-1007(B) no longer are being met respecting a material or service covered under a contract awarded under this rule, the Committee shall withdraw its approval of such~~

Notices of Proposed Rulemaking

material or service and notify the State Procurement Office and the AIB or ACI, as appropriate. The State Procurement Office, upon receipt of such notice, shall discontinue procurement of the disapproved material or service until such time as the Committee again may approve the material or service.

- A.** Competition is not required under A.R.S. § 41-2636(D) to enter into a contract for a material or service that is offered from a set aside agency, but may be used at the discretion of the agency chief procurement officer or local public procurement unit. If competition is used, an agency chief procurement officer may either:
1. Seek competition only from applicable set aside agencies; or
 2. Seek competition under A.R.S. §§ 41-2533, 41-2534, or 2535.
- B.** Contracts awarded under this Section shall not exceed five years, including any renewal options.

R2-7-1009. ~~Procurement of Other AIB or ACI Materials or Services by State Governmental Units~~ Set-Aside Application Dispute Process

~~A state governmental unit may enter into an agreement pursuant to R2-7-1004 to purchase without competitive bidding a material or service that AIB or ACI has not submitted to the Committee or that has been rejected by the Committee provided delivery and quality of the material or service meet the state governmental unit's reasonable requirements.~~

- A.** Any interested party may dispute any committee decision.
- B.** An interested party shall submit the dispute of a committee decision to the committee Chair in writing and shall include:
1. Name, address, and telephone number of the person submitting the dispute;
 2. Signature of the person or the person's representative;
 3. Identification of the set-aside application disputed;
 4. A detailed statement of the legal and factual grounds for the dispute including copies of relevant documents; and
 5. The form of relief requested.
- C.** A dispute of a set-aside application shall be filed with the committee chair through the State Procurement Office within 14 days after the person who submitted the dispute knows or should have known the basis of the dispute.
- D.** The committee chair shall promptly give written notice of the dispute to the set-aside applicant and the committee.
- E.** The committee chair shall resolve the dispute. The committee chair shall issue a written decision within 14 days after the date the dispute has been filed. If the committee chair fails to issue a decision within 14 days, the person who submitted the dispute may proceed as if the dispute has been denied.
- F.** An appeal to the decision of the committee chair shall be made to the Director under R2-7-A905.

R2-7-1010. ~~Renumbered~~ Repealed

ARTICLE 11. RESERVED

ARTICLE 12. RESERVED

ARTICLE 13. ON-LINE BIDDING

R2-7-1301. On-Line Solicitation Process

- A.** The agency chief procurement officer shall obtain submit a written request to procure either for a single procurement or group of procurements from the state procurement administrator before proceeding with on-line bidding as defined in A.R.S. § 41-2571. The request shall include the following information:
1. An estimate of the number of prospective offerors;
 2. A description of the proposed on-line procurement method to be utilized and an explanation of how this method will foster competition;
 3. An explanation of why the proposed procurement method is advantageous to the state; and
 4. The scope, duration, and estimated total dollar value of the procurement need.
- B.** The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- C.** Prior to modifying the scope, duration, or cost of an approved on-line solicitation process, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R05-382]

PREAMBLE

1. **Sections Affected**
R4-30-221
- Rulemaking Action**
Amend
2. **The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 32-106 (A)(1), 32-106 (A)(3), and 32-106(A)(4)
Implementing statute: A.R.S. §§ 32-122.01(A)(2), 32-122.01(A)(3), 32-122.01(B)(2), 32-122.01(B)(3)
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 2797, July 29, 2005
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Julie Ruff
Address: Arizona State Board of Technical Registration
1110 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4940
Fax: (602) 364-4931
E-mail: julie.ruff@btr.state.az.us
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
Statute 32-106(B) authorizes the Board to decide which branches of engineering it shall recognize. The National Council of Examiners for Engineers and Surveyors (NCEES) has recognized Architectural Engineering as an engineering branch of practice and has created a national qualifying examination for this branch. The Board Technical Registration recognizes all engineering branches that have an NCEES qualifying examination.
6. **A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
Not applicable
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
8. **The preliminary summary of the economic, small business, and consumer impact:**
There are no significant impacts on other government agencies.
9. **The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Name: Julie Ruff
Address: Arizona State Board of Technical Registration
1110 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4940
Fax: (602) 364-4931
E-mail: julie.ruff@btr.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments will be accepted between 8:00 a.m. and 4:00 p.m., Monday through Friday, at 1110 W. Washington St., Suite 240, Phoenix, AZ 85007, via fax at (602) 364-4931 or by e-mail at julie.ruff@btr.state.az.us.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 2. REGISTRATION PROVISIONS

Section

R4-30-221. Engineering Branches Recognized

ARTICLE 2. REGISTRATION PROVISIONS

R4-30-221. Engineering Branches Recognized

A. The Board shall recognize the branches of engineering described below for review of experience, selection of examination, definition of examination areas, and definition of demonstrated proficiency areas to be inscribed on the seal. The branches do not limit the areas of a registrant's practice of engineering. (See R4-30-301(18))

1. Agriculture: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for agricultural machinery, drainage, irrigation, terracing, farm electricity or water pumps and wells for the maintenance of adequate potable water supplies for crops, people, animals, and industry.
2. Architectural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for building mechanical, acoustical, electrical, lighting and structural systems.
- ~~2.3.~~ Chemical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for chemical enterprises, chemical and biological processes, plant layout, production of pilot plants, water, wastewater and pollution control plants, piping and distribution systems, heat exchanges, energy production management and distribution systems, process instrumentation and control systems, biomedical equipment, mining and minerals beneficiation, corrosion retardation, heat, mass and momentum transfer systems, reaction kinetics, thermodynamics, quality assurance controls, and systems for heat transmission.
- ~~3. 4.~~ Civil: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for highways, streets, transportation systems, drainage and flood control structures, surface and subsurface hydrologics, sewers, tunnels, railroads, geotechnical analysis, waterfronts, water and wastewater systems, water power and supply apparatus, wells, pumps, bridges, dams, irrigation structures, water purification apparatus, incinerators or site fire protection systems.
- ~~4.5.~~ Control Systems: Consultation, investigation, evaluation, planning, design, location, development, and review of construction of control systems and their constituent devices including, but not limited to, dynamic stability and the application of instrumentation and feedback control principles to regulate and operate chemical plants, petroleum refineries, food processing plants, water and waste treatment plant, power plants, pollution abatement system, transportation system, and other dynamic processes and systems.
- ~~5.6.~~ Electrical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for use in power systems, electronic and transmission equipment, electric service and supply systems, lighting systems, communication service and supply systems, fire alarm and detection systems, control systems or electrical installations.
- ~~6.7.~~ Environmental: Consultation, investigation, evaluation, planning, design, location, development, and review of construction of water and wastewater systems, both domestic and process (industrial/commercial) solid waste and hazardous materials system, air quality system, and health, safety, and environmental protection including, but not limited to, emergency response, risk analysis, radiation protection, noise toxicology, and industrial hygiene.
- ~~7.8.~~ Fire Protection: Consultation, investigation, evaluation, planning, design, location, development, and review of con-

Notices of Proposed Rulemaking

struction for building exiting and life safety systems, fire suppression systems and devices, fire detection and alarm systems and devices, smoke exhaust and smoke management systems, fire resistance for building components and assemblies, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems, and the reduction and control of fire hazards due to processes subject to fire or explosion.

8-9. Geological: Consultation, investigation, evaluation, planning, design, location, development, and review of construction or geological studies related to surface and subsurface excavations and foundations, stability of slopes, groundwater locations, geological material age and strength determinations near surface or deep subsurface geological structure determinations, and geophysical mapping of geological formations and groundwater locations.

9-10. Industrial: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for factory layouts, tools and fixtures, factory planning, time and motion study systems, rate plans, production plans, quality control systems and analysis, work simplification systems, methods studies and cost, production control, organizational, operational and labor needs, or safety analysis.

10-11. Mechanical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for air conditioning, refrigeration, ventilation, combustion, heat transfer, energy, power, fuels, propulsion, machinery, tools, manufacturing, fluids, plumbing, fire suppression systems and devices, water supplies and pumping systems for fire protection, including the hydraulic analysis of such systems.

11-12. Metallurgical: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects in the production of metals or metal objects, testing procedures, metal processing, failure analysis procedures, mining and mineral beneficiation or the development of metal alloys.

12-13. Mining: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for projects concerning the construction of plants, shaft and bottom layouts, ventilation and hoisting systems, head frames, washery or concentration mills, mining methods and testing procedures or metallurgical works and production procedures.

13-14. Nuclear: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for nuclear waste management, alternative waste management systems, disposal criteria and risk evaluation, transportation, packaging, decontamination, handling, welding evaluation, site stabilization, recovery techniques, water and air quality control systems, waste volume management, evaporation systems, reactor safety methods, health safety systems, cycle analysis or nuclear fuels.

14-15. Petroleum: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for drilling equipment, pipelines, refinery plants, gathering systems, handling and storage systems, exploitation and selection methods, gas measurement and core analysis, phase behavior studies, reserve calculations or the development of petroleum products.

15-16. Sanitary: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for water treatment and sewage disposal plants, water systems, sewers, incinerators, distribution systems, sewage and industrial waste treatment plants, pollution reduction systems, sanitary facilities or public health systems.

16-17. Structural: Consultation, investigation, evaluation, planning, design, location, development, and review of construction for force-resisting and load-bearing members and their connections for structures such as foundations, bridges, walls, columns, slabs, beams, trusses or similar members used singly or as part of a larger structure.

B. An applicant shall submit a separate application and application fee for each branch for which application is made. An applicant who wishes to change the branch of application after the application has been evaluated shall submit the request in writing and pay an additional application fee.

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

[R05-381]

PREAMBLE

1. Sections Affected
R4-30-301

Rulemaking Action
Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. §§ 32-106 (A)(1), 32-106 (A)(3), and 32-106(A)(4)

Notices of Proposed Rulemaking

Implementing statute: A.R.S. §§ 32-122.01(A)(2), 32-122.01(A)(3), 32-122.01(B)(2), 32-122.01(B)(3)

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 2798, July 29, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Julie Ruff
Address: Arizona State Board of Technical Registration
1110 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4940
Fax: (602) 364-4931
E-mail: julie.ruff@btr.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

Receiving a fee as an expert witness contingent on the outcome of a dispute is against public policy, as evidenced by prior Arizona court case rulings.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

N/A

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

N/A

8. The preliminary summary of the economic, small business, and consumer impact:

There are no significant economic impacts.

There are no significant impacts on other government agencies.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Julie Ruff
Address: Arizona State Board of Technical Registration
1110 W. Washington St., Suite 240
Phoenix, AZ 85007
Telephone: (602) 364-4940
Fax: (602) 364-4931
E-mail: julie.ruff@btr.state.az.us

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments will be accepted between 8:00 a.m. and 4:00 p.m., Monday through Friday, at 1110 W. Washington St., Suite 240, Phoenix, AZ 85007, via fax at (602) 364-4931 or by e-mail at julie.ruff@btr.state.az.us.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 30. BOARD OF TECHNICAL REGISTRATION

ARTICLE 3. REGULATORY PROVISIONS

Section

R4-30-301. Rules of Professional Conduct

ARTICLE 3. REGULATORY PROVISIONS

R4-30-301. Rules of Professional Conduct

All registrants shall comply with the following rules of professional conduct:

1. A registrant shall not submit any materially false statements or fail to disclose any material facts requested in connection with an application for registration, certification, or subpoena.
2. A registrant shall not engage in fraud, deceit, misrepresentation or concealment of material facts in advertising, soliciting, or providing professional services to members of the public.
3. A registrant shall not knowingly commit bribery of a public servant as proscribed in A.R.S. § 13-2602, knowingly commit commercial bribery as proscribed in A.R.S. § 13-2605, or violate any federal statute concerning bribery.
4. A registrant shall comply with state, municipal, and county laws, codes, ordinances, and regulations pertaining to the registrant's area of practice.
5. A registrant shall not violate any state or federal criminal statute involving dishonesty, fraud, misrepresentation, embezzlement, theft, forgery, perjury, bribery, or breach of fiduciary duty, if the violation is reasonably related to the registrant's area of practice.
6. A registrant shall apply the technical knowledge and skill that would be applied by other qualified registrants who practice the same profession in the same area and at the same time.
7. A registrant shall not accept an assignment if the duty to a client or the public would conflict with the registrant's personal interest or the interest of another client without full disclosure of all material facts of the conflict to each person who might be related to or affected by the project or engagement in question.
8. A registrant shall not accept compensation for services related to the same project or professional engagement from more than one party without making full disclosure to all parties and obtaining the express written consent of all parties involved.
9. A registrant shall make full disclosure to all parties concerning:
 - a. Any transaction involving payments to any person for the purpose of securing a contract, assignment, or engagement, except for actual and substantial technical assistance in preparing the proposal; or
 - b. Any monetary, financial, or beneficial interest the registrant may hold in a contracting firm or other entity providing goods or services, other than the registrant's professional services, to a project or engagement.
10. A registrant shall not solicit, receive, or accept compensation from material, equipment, or other product or services suppliers for specifying or endorsing their products, goods or services to any client or other person without full written disclosure to all parties.
11. If a registrant's professional judgment is overruled or not adhered to under circumstances where a serious threat to the public health, safety, or welfare may result, the registrant shall immediately notify the responsible party, appropriate building official, or agency, and the Board of the specific nature of the public threat.
12. If called upon or employed as an arbitrator to interpret contracts, to judge contract performance, or to perform any other arbitration duties, the registrant shall render decisions impartially and without bias to any party.
13. To the extent applicable to the professional engagement, a registrant shall conduct a land survey engagement in accordance with the April 12, 2001 Arizona Professional Lands Surveyors Association (APLS) Arizona Boundary Survey Minimum Standards, as adopted by the Board on June 15, 2001, the provisions of which are incorporated in this subsection by reference and on file with the Office of the Secretary of State. This incorporation by reference does not include any later amendments or editions.
14. A registrant shall comply with any subpoena issued by the Board or its designated administrative law judge.
15. A registrant shall update the registrant's address and telephone number of record with the Board within 30 days of the date of any change.
16. A registrant shall not sign, stamp, or seal any professional documents not prepared by the registrant or a bona fide employee.

Notices of Proposed Rulemaking

17. Except as provided in subsections (18) and (19), a registrant shall not accept any professional engagement or assignment outside the registrant's professional registration category unless:
 - a. The registrant is qualified by education, technical knowledge, or experience to perform the work; and
 - b. The work is exempt under A.R.S. § 32-143.
18. A registered professional engineer may accept professional engagements or assignments in branches of engineering other than that branch in which the registrant has demonstrated proficiency by registration but only if the registrant has the education, technical knowledge, or experience to perform such engagements or assignments.
19. Except as otherwise provided by law, a registrant may act as the prime professional for a given project and select collaborating professionals; however, the registrant shall perform only those professional services for which the registrant is qualified by registration to perform and shall seal and sign only the work prepared by the registrant or by the registrant's bona fide employee.
20. A registrant who is designated as a responsible registrant shall be responsible for the firm or corporation. The Board may impose disciplinary action on the responsible registrant for any violation of Board statutes or rules that is committed by a non-registrant employee, firm, or corporation.
21. A registrant shall not enter into a contract for expert witness services on a contingency fee basis or any arrangement in a disputed matter where the registrant's fee is directly related to the outcome of the dispute.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R05-372]

PREAMBLE

1. Sections Affected

R12-4-302	Amend
R12-4-305	Amend
R12-4-308	Amend
2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 17-231

Implementing statute: A.R.S. §§ 17-231, 17-234, and 17-302
3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 11 A.A.R. 4143, October 21, 2005
4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Carlos Ramírez, Rule Writer

Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399

Telephone: (602) 789-3288, ext. 206

Fax: (602) 789-3677
5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Arizona Game and Fish Department is proposing amendments to Commission rules dealing with the taking and handling of wildlife to improve wildlife management and to meet the needs of the regulated community.

The proposed rulemaking would authorize the implementation and use of a "two-part" tag. The Department has sporadically received comments from the public requesting a means to authorize another individual to possess a portion of a carcass of an animal that is taken in the field. The current system does not have a mechanism through which an individual can easily authorize someone other than the original tag holder to transport the parts of their lawfully taken wildlife separate from the original tag. This amendment will allow that. A new "two-part" tag would give a hunter the option of attaching one part of the tag to one part of an animal, and the other part of the tag to accompany the other part of the animal.

Notices of Proposed Rulemaking

This rulemaking would also authorize possession of a bear or mountain lion that kills livestock if the individual possesses a valid hunting license, a nonpermit-tag, the wildlife is taken during a closed season, and the take is authorized under A.R.S. § 17-302. Currently, the Department authorizes a property owner or livestock owner and operator to take depredating wildlife if it damages property or kills livestock under A.R.S. §§ 17-239 and 17-302. However, both of these statutes prohibit the hunter that takes the wildlife to possess it, and does not require purchase of a license. A mountain lion or bear taken under this rule would count towards the annual bag limit prescribed by Commission Order.

Lastly, the proposed amendments would require that a hunter that takes either bear or mountain lion report the take within 48 hours, if the Department requires inspection of either species. The rulemaking would also require that within 10 days of taking a bear or mountain lion, each hunter shall present the skull, hide, and attached proof of sex for inspection to the Department. A caveat is added that if a hunter freezes the skull or hide before presenting it for inspection, in case the hunter was preparing it for taxidermy, the hunter shall prop the jaw open to allow access to the teeth and shall ensure that proof sex is attached to the hide and identifiable. The Department's reason for proposing this change is so that wildlife managers can obtain more accurate wildlife data, and be more reactive in their efforts to regulate the take of bear and mountain lion. For some Commission authorized mountain lion hunts, only a few animals are authorized to be taken. In those game management units where there are so few tags available, the Department wants to ensure that the harvest objective is adhered to as closely as possible.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rulemaking will benefit hunters, those with interests in livestock operations where there are established populations of bear and mountain lion, and the Department. There will also be costs to these groups as a result of this rulemaking, though they will be negligible. The proposed rulemaking will not impact private or public employment, and will not significantly impact small businesses or their customers. The proposed rulemaking will not significantly impact state revenues. The Department has determined that there are no alternative means for achieving the objectives of the proposed rulemaking, and that the benefits outweigh any costs.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Carlos Ramírez, Rule Writer
Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399
Telephone: (602) 789-3288, ext. 206

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Game and Fish Commission will hold a public hearing to receive oral comment from the regulated community on:

Date: December 9-10, 2005
Time: TBA
Location: Francisco Grande Hotel & Golf Resort
26000 Gila Bend Highway
Casa Grande, AZ 85222

The Arizona Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Sherry Crouch at (602)789-3288 (Voice); 1-800-367-8939 (TDD); 2221 W. Greenway Road, Phoenix, Arizona 85023. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

Section

R12-4-302. Use of Tags

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks

ARTICLE 3. TAKING AND HANDLING OF WILDLIFE

R12-4-302. Use of Tags

- A. In addition to meeting the requirements of A.R.S. § 17-331, an individual who takes wildlife shall have in possession any tag required for the particular season or hunt area.
- B. A tag obtained in violation of statute or rule is invalid and shall not be used to take, transport, or possess wildlife.
- C. An individual who takes wildlife shall not possess a tag issued to anyone else, except as provided in this Section and R12-4-305, or attach to wildlife a tag issued to anyone else, except as provided in R12-4-217.
- D. An individual shall not allow a tag issued to that individual to be attached to wildlife killed by anyone else, except as provided in R12-4-217.
- E. An individual shall not attach a tag issued to that individual to wildlife killed by anyone else, except as provided in R12-4-217.
- F. An individual shall take and tag only the wildlife identified on the tag.
- G. An individual shall use a ~~hunt permit~~-tag only in the season and hunt area for which the ~~hunt permit~~-tag is valid.
- H. An individual who lawfully possesses both a nonpermit-tag and a hunt permit-tag shall not take a genus or species in excess of the bag limit established for that genus or species.
- I. ~~Unless exempted under R12-4-217, immediately~~ Immediately after an individual kills wildlife, unless exempted under R12-4-217 or the individual who took the wildlife wishes to divide the carcass under R12-4-305, the individual shall attach his or her valid tag to the wildlife carcass in the following manner:
 1. Remove all of the detachable paper covering from the adhesive back of the tag;
 2. Seal the exposed adhesive portions of the tag around the wildlife so the tag cannot be removed or reused and all printing on the face of the tag is visible and:
 - a. For a deer, elk, or antelope, seal the tag around the antler or horn, or through the gambrel of a hind leg;
 - b. For a javelina, bighorn sheep, mountain lion, buffalo, or bear, seal the tag through the gambrel of a hind leg; and
 - c. For a turkey, sandhill crane, or pheasant, seal the tag around the neck or a leg.
- J. An individual who lawfully takes wildlife under a tag and wishes to authorize another individual to possess, transport, or ship any portion of a carcass under R12-4-305 shall, at the time the portions are to be possessed, transported, or shipped independent from the original tag holder:
 1. Tear and separate the tag portions along the perforated line.
 2. Legibly complete and sign the Carcass/Transportation/Shipping Permit portion in accordance with R12-4-305(D), and
 3. Provide to the individual who will possess and transport the portions of the carcass the completed Carcass/Transportation/Shipping permit.
- K. An individual that possesses, transports, or ships a carcass or any part or parts of a carcass in which they were not the original tag holder shall possess the completed Carcass/Transportation/Shipping permit issued as part of the original permit authorizing the take of that animal.
- L. If a tag or a separated portion of a tag has been sealed or mutilated, or the ~~transportation and shipping~~ Carcass/Transportation/Shipping permit portion of the tag is signed or filled out, the tag is no longer valid for taking wildlife.

R12-4-305. Possessing, Transporting, Importing, Exporting, and Selling Carcasses or Parts of Wildlife

- A. For the purposes of this Section, "evidence of legality" means:
1. The wildlife is identifiable as the "legal wildlife" prescribed by Commission order, which may include evidence of species, gender, antler or horn growth, maturity and size; and
 2. The wildlife is accompanied by the applicable license, tag, separated portion of a tag under R12-4-302, stamp or permit required by law.
- B. An individual shall ensure that evidence of legality remains with the carcass or parts of a carcass of any wild mammal, bird, or reptile that the individual possesses or transports, until arrival at the individual's permanent abode, a commercial processing plant, or the place where the wildlife is to be consumed.
- C. In addition to the requirement in subsection (B), an individual possessing or transporting the following wildlife shall also ensure that:
1. Big game, sandhill cranes, and pheasant each have the required valid tag attached as prescribed in R12-4-302;
 2. Migratory game birds, except sandhill cranes, each have one fully feathered wing attached;
 3. Each sandhill crane has either the fully feathered head or one fully feathered wing attached; and
 4. Each quail has attached a fully feathered head, or a fully feathered wing, or a leg with foot attached, if the current Commission order has established separate bag or possession limits for any species of quail.
- D. An individual who has lawfully taken wildlife that requires a valid tag when prescribed by the Commission, such as big game, sandhill crane, or pheasant, may authorize its transportation or shipment by completing and signing the Transportation/Shipping Permit portion of the valid tag for that animal. A separate Transportation/Shipping Permit issued by the Department is necessary to transport or ship to another state or country any big game taken with a resident license. Under A.R.S. § 17-372, an individual may ship other lawfully taken wildlife by common carrier after obtaining a valid Transportation/Shipping Permit issued by the Department. The individual shall provide the following information on the permit form:
1. Number and description of the wildlife to be transported or shipped;
 2. Name of the individual who took the wildlife and that individual's address, license number, license class, and tag number;
 3. Name and address of the individual who receives a portion of the divided carcass of the wildlife under subsection (E), if applicable;
 4. Address of destination where the wildlife is to be transported or shipped; and
 - 4.5. Name and address of transporter or shipper.
- E. An individual who lawfully takes wildlife under a tag may authorize another individual to possess the head or carcass of the wildlife by separating and attaching the tag as prescribed in R12-4-302. An individual who receives a portion of the wildlife shall provide the identity of the individual who took and gave the portion of the wildlife.
- F. An individual shall not possess the horns of a bighorn sheep, taken by a hunter in this state, unless the horns are marked or sealed as prescribed in R12-4-308.
- ~~FG.~~ An individual who sells, offers for sale, or exports the raw pelt of a bobcat taken in this state shall obtain a bobcat permit tag available for a fee as provided in R12-4-102 at Department offices and other locations at those times and places as determined and published by the Department, and shall ensure that the bobcat permit tag is locked through the mouth or eye openings so that it cannot be removed.
- ~~H.~~ Unless an individual has taken the annual bag limit for bear or mountain lion, an individual who takes bear or mountain lion under A.R.S. § 17-302, if the season for bear or mountain lion is closed, may retain the carcass of the wildlife if the individual has a valid hunting license and the carcass is tagged with a nonpermit-tag as required by R12-4-114 and R12-4-302. An animal retained shall count towards the annual bag limit for bear or mountain lion as authorized in Commission Order. The individual shall comply with R12-4-308.
- ~~G.I.~~ An individual may import into this state carcasses or parts of carcasses of wildlife that have been lawfully taken in another state or country if accompanied by evidence of legality.
- ~~H.J.~~ Individuals who obtain buffalo meat under R12-4-306 may sell the meat.
- ~~I.K.~~ An individual may import into this state the carcasses or parts of aquatic wildlife that have been lawfully taken in another state or country if accompanied by evidence of legality, and if transported and exported in accordance with the laws of the state or country of origin.
- ~~J.L.~~ An individual in possession of or transporting the carcasses of any freshwater fish that have been taken within this state shall ensure that the head, tail, or skin is attached so that the species can be identified, numbers counted, and any required length determined.
- ~~K.M.~~ An individual in possession of a carp (*Cyprinus carpio*) or buffalofish (*Ictiobus* spp.) carcass taken under Commission order may sell the carcass.

R12-4-308. Wildlife Inspections, Check Stations, and Roadblocks

- A. The Department has the authority to establish mandatory wildlife check stations. The Department shall publish the location, check-in requirements, and check-out requirements for a season with the published Commission order establishing

Notices of Proposed Rulemaking

the season.

1. Hunters shall personally check in at a wildlife check station before hunting in a season with a published check-in requirement.
 2. The Department shall ensure that wildlife check stations with a published check-in requirement are open continuously from 8:00 a.m. the day before the season until 8:00 p.m. the first day of the season, and from 8:00 a.m. to 8:00 p.m. during each day of the season.
 3. Hunters shall personally check out after hunting in a season with a published check-out requirement, and shall present for inspection any wildlife taken and display any license, tag, or permit required for taking or transporting wildlife.
 4. The Department shall ensure that wildlife check stations with a published check-out requirement are open continuously from 8:00 a.m. to 8:00 p.m. during each day of the season and remain open until 12:00 noon on the day following the close of the season.
- B.** The Department has the authority to conduct inspections for bighorn sheep, archery deer, bear, mountain lion and special big game license-tags (deer, elk, antelope, and buffalo) at the Department's Phoenix and regional offices or designated locations. Regional offices are open 8:00 a.m. to 5:00 p.m., Monday through Friday, except on legal state holidays.
1. All bighorn sheep hunters shall personally check out within three days after the close of the season. Each hunter who takes a bighorn sheep shall submit the intact horns and skull for inspection and photographing. The Department representative shall affix a mark or seal to one horn of each bighorn sheep lawfully taken under Commission order. The hunter shall not remove, alter, or obliterate the mark or seal.
 2. All special big game license-tag hunters who tag a deer, elk, antelope, or buffalo shall submit the intact horns or antlers and skull or skullcap for inspection and photographing within three days after the close of the season.
 3. A successful non-permit tag archery deer hunter shall report information about the kill to a Department office in person or by telephone within 10 days of taking the deer if the hunt area does not have a check station requirement.
 4. A successful bear or mountain lion hunter shall report information about the kill in person or by telephone within 48 hours of taking ~~a bear the wildlife~~. ~~If the kill is reported by telephone, the~~ The report shall include the name of the hunter, the hunter's hunting license number, the sex of the ~~bear~~ wildlife taken, the management unit where the ~~bear~~ wildlife was taken, and a telephone number where the hunter can be reached for additional information. Within 10 days of taking the wildlife, each hunter who takes a bear or mountain lion shall present the skull, hide, and attached proof of sex for inspection. If a hunter freezes the skull or hide before presenting it for inspection, the hunter shall prop the jaw open to allow access to the teeth and ensure that the attached proof of sex is identifiable and accessible. In addition, the hunter shall provide a tooth from the bear to the Phoenix office within 20 days after contacting the Department.
 5. ~~A successful mountain lion hunter shall report information about the kill in person or by telephone within 10 days of taking the mountain lion. In addition, the hunter shall provide a tooth from the mountain lion to the Phoenix office within 20 days after contacting the Department.~~
- C.** The Director or Director's designee may establish vehicle roadblocks at specific locations when necessary to ensure compliance with applicable wildlife laws. Any occupant of a vehicle at a roadblock shall, upon request, present for inspection all wildlife in possession, and produce and display any license, tag, stamp, or permit required for taking or transporting wildlife.
- D.** This Section does not limit the game ranger or wildlife manager's authority to conduct stops, searches, and inspections under A.R.S. §§ 17-211(D) and 17-331, or to establish voluntary wildlife survey stations to gather biological information.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

[R05-373]

PREAMBLE

1. Sections Affected

R12-4-401
R12-4-402
R12-4-403
R12-4-404
R12-4-405
R12-4-406
R12-4-407

Rulemaking Action

Amend
Amend
Amend
Amend
Amend
Amend
Amend

Notices of Proposed Rulemaking

R12-4-408	Amend
R12-4-409	Amend
R12-4-410	Amend
R12-4-411	Amend
R12-4-412	Amend
R12-4-413	Amend
R12-4-414	Amend
R12-4-415	Amend
R12-4-416	Amend
R12-4-417	Amend
R12-4-418	Amend
R12-4-419	Amend
R12-4-420	Amend
R12-4-421	Amend
R12-4-423	Amend
R12-4-424	Amend
R12-4-425	Amend
R12-4-426	Amend
R12-4-427	Amend
R12-4-428	Amend
R12-4-430	Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statute: A.R.S. § 17-231

Implementing statute: A.R.S. §§ 17-102, 17-238, 17-240, 17-306, 17-307(C), and 17-317

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 10 A.A.R. 2891, July 16, 2004

Second Notice of Rulemaking Docket Opening: 11 A.A.R. 2753, July 22, 2005

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Carlos Ramirez, Rule Writer

Address: Arizona Game and Fish Department
2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399

Telephone: (602) 789-3288, ext. 206

Fax: (602) 789-3677

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The Department proposes to amend the rules of this Article generally as stated in the five-year rule review report prepared and submitted to the Governor's Review Council and approved at their January 2004 meeting. In evaluating the scope and effectiveness of the revisions specified in the review, the Department finds it necessary to discontinue certain revisions, and to propose additional amendments to address new and emerging concerns. Of significant note is the Department's extensive revisions to rewrite the rules to place them in the active voice. Although this appears to be a significant modification of the Article, the Department holds that the impact of the rules will not change. The Department proposes to amend the rules as follows:

The Department is proposing to amend R12-4-401 to define terms with insufficient definitions or commonly used terms with no definitions. The term "agent" will be added as a result of amendments authorizing the use of agents in rules beyond R12-4-423. To clarify what constitutes commercial activity under a special license that allows it, the Department proposes to add a definition for "commercial." Several rules refer to domestic animals and how they are used relevant to particular special licenses; for that, the Department will also add a definition to clearly state what is "domestic." Although it does not appear in rule, the term "exotic" is used frequently by the Department to clarify what it is, typically for those who seek to possess such wildlife under a special license. Thus, the Department proposes to adopt a definition for "exotic." The definition for "educational display" will be clarified and amended to disallow solicitation of payment under a special license that authorizes educational display. The terms "native," "nonnative," and "photography" appear throughout the Article as well, and also have no definition; the Department proposes to add them. The Department is proposing amendments in several rules to regulate the use of "hybrid wildlife," specifically in R12-4-406, which lists restricted live wildlife species, and R12-4-413, dealing with private game farms. To clearly understand the use of hybrid wildlife, the Department proposes to add a definition for the term. The definition for "threatened native wildlife" will be deleted and replaced with the more applicable "wildlife of special concern." Both definitions emerge from the Department's own research regarding species populations in Arizona.

Notices of Proposed Rulemaking

The definitions for “game farm” and “zoonotic” will be moved from R12-4-430, dealing with special rules for cervids, into this rule. The term “game farm” appears throughout the Article, and “zoonotic” is also used in R12-4-426, dealing with possession of primates.

The Department proposes to amend R12-4-402 to add a new subsection that will authorize the agency to seize, quarantine, or hold wildlife that is kept in a manner that poses an actual or potential threat to other wildlife, or to the safety, health, or welfare of the public. The Department may take such action even if the wildlife is possessed under a special license.

Under R12-4-403, some individuals that hold live wildlife have felt at liberty to release their animals back into the wild under the rule’s authorizing statutes, particularly A.R.S. § 17-306, which does authorize release of live wildlife, but only under Commission authority or agricultural statutes. The Department is amending the rule to prohibit the release of live wildlife under this statute specifically to make it clear and understandable. The Department also proposes to amend this rule to authorize the agency to take any live wildlife that is likely to escape from captivity if it poses an actual or potential threat to native wildlife or public safety.

In general, the Department is making changes throughout this Article to prohibit an individual that holds live wildlife, whether or not it is held under a special license, from releasing or otherwise disposing of live wildlife, if authorized, without first contacting the Department to receive instruction in the proper manner of release or disposal. The reason is to more closely monitor the use of wildlife in this state and to ensure proper management and conservation of the state’s resources, particularly in relation to potentially competitive or threatening species or disease.

The rule R12-4-404 will be amended to clearly state that wildlife held under this rule shall not be disposed of in any manner that may be considered commercial activity. The intent of this rule is not to prescribe or authorize commercial activity regarding wildlife. The Department is also amending this rule to improve management of desert tortoises. The Department proposes to prohibit people from exporting desert tortoises without written authorization from the Department; permission will only be granted if the individual that possesses it takes the tortoise to a jurisdiction where it is legal to possess it. The rule will also be amended to address offspring of grandfathered tortoises possessed under R12-4-407. Under the amendments to R12-4-404, an individual may only hold the offspring of grandfathered tortoises for 24 months from the date of hatching. The Department is amending rules to impede the unauthorized or black market trade of desert tortoises native to Arizona. The rule will also be amended to require that if an individual possesses wildlife that later becomes restricted, they must report the wildlife to the Department under R12-4-425.

Because the introduction of nonnative species is a continuous and growing concern for the Department, it is proposing to amend R12-4-405 to require that if an individual imports lawfully possessed mammals, birds, or reptiles without a Department license, that individual shall possess them under a valid license, permit, or other form of authorization from another state, the United States, another country, or are possessed under a lawful exemption. The same requirement will be extended to those who import aquatic live wildlife in addition to the requirements that already exist, but the rule will also be amended to allow people to transport live aquatic wildlife from a restaurant or market if it will be taken directly to its final destination for preparation as food. Under the previous rules, individuals who purchase lobsters and transport them home alive could be considered in violation.

Internationally, the introduction of nonnative plant and animal species has become a large enough concern that more states are taking action to prevent their introduction. Other states have identified introduced species that are becoming a greater biological concern; of those, the Department has identified those species that could feasibly survive in Arizona’s varying climates, and added those to the restricted live wildlife list. The Department is proposing to add: brown tree snakes (*Boiga irregularis*), black carp (*Mylopharyngodon piceus*), temperate basses of the family Moronidae (including white perch and yellow perch), Asian clam (*Corbicula fluminea*), New Zealand mud snails (*Potamopyrgus antipodarum*), Quagga mussels (*Dreissena bugensis*), and Rosy wolfsnails (*Euglandina rosea*). The Department also recognizes there are several species on the restricted wildlife list that are no longer considered potentially threatening or competitive with native species, or are native species that are not threatened themselves, and thus may be held with greater liberty. The Department proposes to remove from the species list: chukar (*Alectoris chukar*), California or valley quail (*Callipepla californica*), ringneck and whitewing pheasant (*Phasianus colchicus*), and sharks: the species of the families Hemiscilliidae, Orectolobidae, Brachaeluridae, and Triakidae; genera of the family Scyliorhinidae: Aulohalaerlurus, Halaerlurus, Haploblepharus, Poroderma, and Scyliorhinus; and genera of the family Parascylliidae: Cirroscyllium and Parascyllium. The Department also proposes to amend the rule to clearly state that domestic animals, as defined in R12-4-401, are not considered wildlife, and thus cannot be restricted. Under the definitions, domestic animals include offspring of domestic animals and wildlife, including those that are restricted. The rule will also be amended to state that hybrid wildlife that results from at least one parent species of restricted wildlife is considered restricted also, and that transgenic species are also considered restricted. Transgenic species are a recent introduction, and refers to wildlife that results from the physical manipulation of its actual genetic structure. The most notorious transgenic species is the “glowing fish.” Specially created for use in aquariums, these fish result from the planting of the bioluminescent characteristics of jellyfish into their gene structure. Although they do not actually glow in the dark, when placed under an ultraviolet light, the jellyfish characters reflect the light to appear as though the fish are indeed glowing. These species are so new that the Department is not comfortable with allowing their unregulated use without learning more about their capacity for threatening or competing with native aquatic wildlife if released into the wild.

The Department is amending R12-4-407 in part to improve management of desert tortoises. The Department proposes to amend this rule to require that an individual receive written authorization to export desert tortoises from the state, as was done in R12-4-404. To ensure that wildlife that enters this state is held lawfully, the Department also proposes to amend the rule to require that if an individual transports wildlife into, throughout, or out of the state for a government-authorized state or county fair or circus, or for photography, that individual shall have evidence of lawful possession as defined in R12-4-401 for the wildlife. The Department also proposes to amend the rule to make references to specific rules that prescribe other exemptions from special license requirements for restricted live wildlife.

The Department is proposing significant amendments to the rules that regulate the issuance of special licenses to make their application requirements more consistent and understandable. Amendments will be made throughout the rules regulating the use of special licenses to require that, among other things, an applicant provide their name, address, physical description, descriptions of where wildlife will be held, a proposal that explains how the issuance of a license is consistent with the purposes for which a license is issued, and their signature, which attests that the information on the application is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked or suspended in any state or by the United States; these amendments will be made in addition to the existing requirements for special licenses. The Department will also amend the special license rules to prescribe a procedure if an applicant is rejected.

Because there is no way to identify what constitutes a special license, the Department proposes to add a subsection to R12-4-409 that lists them. The Department proposes to remove a large block of text that describes the process for issuance of licenses according to time-frames, and move that information into R12-4-106, dealing specifically with licensing time-frames. As part of the effort to make licensing procedures more uniform, the Department also proposes to prescribe prohibitions from obtaining a special license that are similar to the agency's existing prohibitions from obtaining other Department licenses, like those for hunting or fishing. The Department will add a subsection that prohibits an applicant from obtaining a special license if the applicant's live wildlife privileges are revoked in this state, any other state, or by the United States; the applicant has been convicted of illegally holding or possessing live wildlife within three years of applying for a special license; the applicant knowingly provides false information on an application; or the applicant submits an incomplete application. Special license holders, at times, have also interpreted the fact that a special license is issued by a state agency, it somehow supersedes any restrictions on holding live wildlife made by a city or town; this is not the case. To address this misunderstanding, the Department is amending the rule to clearly state that special license holders are not exempt from any municipal, county, state, or federal laws, rules, ordinances, or statutes. The Department is also amending the rule to require that a special license holder submit biological samples to the Department or its designee if an emergency disease condition emerges. This is so that the Department can be more reactive to address potential wildlife concerns if they arise. As stated previously, the Department is amending rules to take a stronger position and prevent the introduction or spread of potentially harmful invasive wildlife species or wildlife diseases or parasites. Conditions that foster these detriments change continuously and often more quickly than any method of rulemaking can react to them. For these reasons, the rule is being amended to authorize the agency to place stipulations on a special license at the time of application or license renewal. These stipulations may be added to conserve wildlife populations, prevent introduction and proliferation of wildlife diseases, to prevent wildlife from escaping, or to ensure public health or safety.

In addition to those amendments made to all special license rules, the Department proposes to amend R12-4-410, dealing with the aquatic wildlife stocking permit, to remove the list of causative agents. Some of these diseases and parasites are no longer a management concern, so there is no reason to keep them in rule. Of those that are, the Department intends to substitute restrictions against those agents by prescribing stipulations to the license. As stated previously, the Department is taking a more steadfast approach in monitoring the disposal or discontinued use of wildlife under a special license. As part of this effort, the Department is amending this rule to require that a permit holder obtain and dispose of native aquatic wildlife as directed by the Department.

To improve wildlife management and to stem a potential disease vector, the Department is amending R12-4-411 to disallow the commercial taking, transporting, and sale of tiger salamanders or "waterdogs" from Arizona's waters. The commercial collection of waterdogs can stress native populations of the species, spread contagious diseases to waters where they have not been introduced, and erode native aquatic salamander species through interbreeding. The Department is also amending the rule to prescribe a procedure for a minnow dealer license holder to obtain certification that imported baitfish are free of diseases and causative agents specified in any stipulations. Certification is already required in rule, but there are no guidelines to instruct a license holder how to obtain it. The Department also proposes to amend the title of the rule to the more applicable "live bait dealer's license," because not all wildlife sold under this license are minnows.

With the amendments to R12-4-413, the Department is attempting to address the growing number of misinterpretations regarding the use of a private game farm license, and to reaffirm the purpose for which this license was authorized. Some applicants obtain the license for the personal or recreational use of wildlife; the license is intended to authorize the commercial use of wildlife for purposes such as slaughter and sale of meat and hides. The Department is proposing an amendment to clearly state that a private game farm license is indeed a commercial license. The Department is also amending the rule to further address the attempted sport harvest of wildlife held under this license. The agency has encountered license holders who accept payment from other individuals so that the purchaser can hunt wildlife on the license holder's property. Because this is not consistent with the objective of this license, the Depart-

ment is amending the rule to prohibit a game farm owner from accepting payment for killing the wildlife. In recent years, the Department has issued private game farm licenses for the possession of servals, or other African leopard cats (ALCs). These mammals are purchased or traded for the purpose of breeding them with domestic cats to produce a domestic hybrid. There are many different names for these domestic hybrids depending on the species that they are bred with: savannas, chausis, bengals, etc. Although the Department has issued licenses to allow people to possess ALCs, the Department's intent for authorizing a private game farm license is not to allow people to breed wildlife with domestic animal species. For this reason, the Department is amending the rule to clearly state that, if breeding takes place, a private game farm license is issued to authorize only the breeding of wildlife to wildlife to produce wildlife offspring: not to authorize breeding of wildlife to domestic species to produce a hybrid that, under the Department's proposed amendments, qualifies as a domestic animal.

The Department is also amending R12-4-413 to remove a "grandfather" clause that authorized an individual to hold restricted live wildlife not listed R12-4-413 if that individual possessed it under a private game farm license issued before April 28, 1989. The Department has no records of any individual that still possesses live wildlife under this license from that date. In addition to the existing prohibition from issuing a license if escape of the proposed species will create a threat to native wildlife, the Department proposes to amend the rule to prohibit issuance of a private game farm license if escape of the proposed species will create a threat to public health or safety. The Department also proposes to require that a private game farm license holder maintain records of all wildlife possessed under the license for three years: specific information is requested in the rule language. Again, this amendment is proposed so that the agency can more closely and accurately monitor what wildlife is held, transported, or used in this state.

One of the general proposals that the Department is adopting is to require that holders of private game farm licenses, game bird shooting preserve licenses, wildlife holding licenses, scientific collecting permits, zoo licenses, wildlife service licenses, and wildlife rehabilitation licenses submit an annual or semi-annual report on license activities. This is to ensure that those license holders are performing authorized activities, and to provide information on license activities to the Department. The agency is prescribing guidelines for the submission of an annual report specific to each license holder's needs, including those for private game farms.

For R12-4-414, dealing with shooting preserve licenses, the Department proposes to amend the rule to prohibit issuance of a license if the species for which an application is made will create a threat to public health or safety if it escaped from captivity. This is to make the rule consistent with other special license rules. In addition to the revisions that are being made to all special licenses, the Department proposes to amend this rule to delete a grandfather clause that heretofore has authorized shooting preserve license holders to hold wildlife that was held before the effective date of the rule (April 28, 1989). The Department does not have any records of any shooting preserve licenses that precede this date. The title of the rule will also be amended to the "game bird shooting preserve license" to more accurately reflect the wildlife for which a license may be issued.

The Department is proposing to amend R12-4-415, dealing with field trial licenses, to clearly state that any wildlife that is released under this license and is not taken during the field trial event becomes property of the state, and thus shall not be taken during the valid dates under this license. In addition to the amendments being made to all special licenses, the Department proposes to amend the title of the rule to "game bird field trial license" to more accurately reflect the wildlife for which a license may be issued.

There are several organizations in Arizona that engage in "bird-dogging," training canines to retrieve downed wildlife, typically birds. Some of these groups are spread across the state, and it is difficult for them to each obtain a field trial training permit. To facilitate these group applications, the Department proposes to amend R12-4-416, dealing with field trial training permits, to authorize an agent to apply on behalf of another individual or a group. The agency is also prescribing guidelines for the authorization, use, and termination of these agents. In addition to those regulations being proposed to all special licenses, the Department proposes to amend the title of the rule to "game bird field trial training permit" to make the title less confusing with the "field trial license" in R12-4-415, and to more accurately reflect the wildlife for which a permit may be issued.

Individuals that possess a wildlife holding license have also taken additional liberties with wildlife possessed under the license. Some have taken to displaying their wildlife for a fee, which the Department holds is not the intent of the license: exhibition is objective of a zoo license. For this reason, the Department is amending R12-4-417 to no longer allow exhibit of wildlife under this license, but to continue to allow commercial photography (for motion picture production or publications, for example) and display for educational purposes. The Department is also proposing to amend the rule to automatically invalidate a license if the primary purpose for which the license was issued no longer exists. If a license holder's wildlife dies, some license holders have interpreted possession of the license as *carte blanche* to possess another animal of the same species as the one that died. This is not the case. To ensure that wildlife is held in a manner consistent with rules prescribing captivity standards, the Department is amending the rule to clearly state that the agency has the authority to conduct a reasonable inspection under R12-4-409. Also in accordance with the general changes being made to special license rules, the Department is amending R12-4-417 to prescribe additional requirements for annual reports that are consistent with requirements made for other special license reports; and to specify how wildlife held under the license or their parts are to be disposed: in a noncommercial manner. In general, this license is not a commercial license, though the Commission has authorized some limited commercial use.

The scientific collecting permit, authorized under R12-4-418, allows individuals to collect wildlife specimens for research, but at times the Department receives applications to collect specimens that may not be consistent with the agency's management objectives. Instead of rejecting the application, the Department is proposing to amend the rule to authorize the agency to issue the permit for a different species, a different number of animals per species, a different method of take, or to restrict the age or condition of wildlife to be taken. Also to diminish abuses under this permit, the rule will be amended to clearly state that wildlife held under the permit may be photographed for a noncommercial purpose. Again, special restrictions must be placed on this permit, because it is not a commercial permit. To ensure that it is, however, used for educational purposes, if that was the reason for which the permit was issued, the Department proposes to amend the rule to require that an individual also include in the application the minimum number of presentations that the applicant will make under the permit, contact information for any clients that the applicant has already contacted about giving a presentation, and the number of species specimens that the applicant already possesses, if possible. In keeping with the amendments made to authorize the placement of stipulations on a special license, the Department proposes to amend the rule to require that any agents authorized under this permit abide by the stipulations placed on it.

To ensure that a wildlife hobby license is not used for a commercial purpose, which is unlawful and not consistent with its objective, R12-4-419 will be amended to clearly state that wildlife held under this license shall not be exhibited. Under the definition for "exhibit," both display and photography are allowed as commercial activities. Finally, the Department will amend this rule to require only that an applicant submit a diagram or description of the facility where wildlife will be held if applying to hold 50 individual specimens or more. Currently, the Department requires a holding diagram or description for 25 birds, which the agency finds too few to warrant a full holding diagram.

The Department proposes to amend the zoo license rule, R12-4-420, to allow a temporary exhibit for 60 days, rather than 20. This provides a greater return on the investment of establishing such an exhibit. The Department is also prescribing additional methods of disposing of wildlife: by selling, giving, or trading it to another zoo or to an appropriate special license holder, or exporting it to a zoo in another state that is certified by the American Zoo and Aquarium Association. The Department is also proposing that a zoo license holder hold wildlife in such a manner as to prevent it from escaping the facility specified on the license, and also to prevent the entry of unauthorized individuals or other wildlife. To ensure that zoo licenses are issued to individuals who have an interest in fulfilling the objectives for which this license was made, the Department is proposing to clearly state the purposes for which a license shall be issued: for the advancement of science, wildlife management, or promotion of public health or welfare; education; or conservation, or maintaining a population of wildlife threatened with extinction in the wild. As is being done in other rules, the Department is requiring that an annual report be submitted to the agency detailing license activities to ensure that the license is being used for its intended objective and to give the Department more information on the use of wildlife in the state. As part of the agency's efforts to monitor wildlife activity more closely, the Department is also amending the rule to require that a zoo license holder to make a written request and receive approval from the Department before adding any species of wildlife that is listed in R12-4-406.

More and more businesses are advertising animal control services, including removal of wildlife. To ensure that only qualified and authorized individuals are handling state wildlife, the Department is requiring that any individual that provides, advertises, or offers assistance with nuisance wildlife to the public for or absent a fee shall obtain a wildlife service license under R12-4-421. The Department is also amending the rule to allow license holders to engage in authorized activities with javelina. With expanding developments stretching further out into what was previously wilderness habitat, wildlife encounters have increased in newly urbanized areas. Most of these species are already authorized for removal under a wildlife service license, except javelina, which is designated as a big game animal. A license holder shall also contact the regional office that presides over the area before engaging in authorized activities with javelina. Additional methods of disposal shall be prescribed in general for wildlife held under this license, including appropriate environmental conditions, habitat conditions, and authorizing the release of live wildlife to an appropriately licensed rehabilitator. The Department is also amending the rule to prescribe procedures for submission and content of annual reports.

The Department is not amending R12-4-422, dealing with sport falconry, as stated in the 2004 five-year rule review. Amendments that were proposed in the report were based on amendments proposed to be made to federal regulations regarding sport falconry; those changes were subsequently discontinued. The Department intends to pursue a separate rulemaking to amend the rule once federal changes are adopted and effective.

The Department has had problems in the past with individuals taking advantage of the privileges given under a wildlife rehabilitation license. Although R12-4-423 states that this license does not authorize an individual to permanently possess wildlife, the Department proposes to amend this rule to clearly state that fact, because some license holders simply feel they should be allowed to permanently hold wildlife, specifically if it cannot be returned to the wild. If the license holder is unwilling to obtain a wildlife holding license to continue to hold wildlife that cannot meet its own needs in the wild, the Department proposes to amend the rule to clearly state that all wildlife held under this license is still wildlife and is thus property of the state, as authorized under A.R.S. § 17-102; as such, that wildlife may be impounded by the Department. The Department is also amending the rule to authorize a licensed rehabber to provide care for raccoons. To assist license holders to defer some of the costs of rehabilitating wildlife, the Department proposes to amend the rule to allow a rehabilitator to accept donations from the public. As stated previously, the Department is taking a more staunch position in the use of wildlife in the state, including methods of disposal. The

Notices of Proposed Rulemaking

Department is proposing to amend this rule to require that if wildlife held under this license is disposed, it shall be done as directed in writing by the Department. If wildlife cannot be released back into the wildlife after the timeframes currently prescribed in rule (180 days for birds, 90 days for other wildlife), the Department proposes to amend the rule to require that the license holder either obtain authorization from the Department to retain, transfer, or otherwise dispose of the wildlife, or euthanize the wildlife. The Department will also amend the rule to comply with amendments made to federal guidelines for wildlife rehabilitation, and to extend the license to a three-year license instead of a two-year license.

The Department is amending R12-4-424, dealing with white amur stocking licenses, to change the title to the more appropriate "white amur stocking and holding license," since the rule authorizes both stocking and holding. To ensure that restocking of white amur fish is done in a timely manner, the Department is proposing that restocking shall not exceed 20 days, these dates shall be specified on the license, and that only during this time is restocking valid. Lastly, the Department is amending the rule to eliminate a renewal fee for a license if the license holder stocks white amur in a private pond that is not associated with a business. There are some individuals who use white amur to remove aquatic grasses in their personal ponds; the Department does not find it necessary to charge those individuals \$200 annually to renew the license and to continue personal use of this wildlife.

To allow the continued personal use of wildlife that was previously not restricted, the agency is amending R12-4-425 to "grandfather" possession of wildlife that is lawfully possessed, but has become restricted with this rulemaking. With this, the Department will also amend the title of the rule from "restricted live wildlife lawfully possessed without license or permit prior to the effective date of Article 4" to "restricted live wildlife lawfully possessed without license or permit before the effective date of Article 4 or any subsequent amendments." Under this rule, however, special restrictions will be added to ensure that individuals do not abuse this privilege in such a way as to create a threat to native wildlife populations. If wildlife held under this rule is transferred to a special license holder, that license holder must use and possess it only as authorized by the special license; "grandfather" privileges do not extend to other individuals. Offspring of wildlife shall also be disposed, either by exportation, euthanization, or as otherwise directed by the Department. If "grandfathered" wildlife is exported, the privileges granted under this rule are terminated; the individual that possesses the wildlife shall obtain a special license to continue to hold it.

The Department has had increasing problems with individuals who own primates under R12-4-426, dealing with possession of primates, particularly those who are continuously involved in incidents. If a primate bites, scratches, or otherwise exposes a human to a pathogenic organisms, the individual that owns the primate shall have the primate examined by a state licensed veterinarian so that the doctor can perform any examinations or lab tests determined necessary by the Department. The Department also is amending the rule to require the Department to notify the exposed individual and the Department of Health Services, Vector Borne and Zoonotic Disease Section within 10 days of receiving the test results. Finally, the Department proposes to amend the rule to require that a primate that is involved in more than one incident of biting, scratching, or otherwise exposing a human to pathogenic organisms shall be maintained in captivity or disposed as directed in writing by the Arizona Game and Fish Director or the Director's designee.

The Department proposes to amend R12-4-408, dealing with holding wildlife for the Department; R12-4-428, which prescribes captivity standards; and R12-4-430, dealing with importation, handling, and possession of cervids, to make them consistent with other rules of this Article, and to make it consistent with the current guidelines for rulemaking language and style. The title of R12-4-427 will be amended from "rehabilitation exemptions" to "exemptions from requirements to possess a wildlife rehabilitation license" for consistency.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department has not referenced any study that it proposes to rely on in its evaluation of or justification for the proposed rule.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The Department believes that the proposed amendments to rules listed in Article 4, Live Wildlife will impact the Department, the general public, individuals and businesses that use or enjoy live wildlife, special license holders, and the wildlife resources of this state. Overall, these amendments will benefit the Department by authorizing it to take more steadfast action against the potential introduction of nonnative wildlife, which could severely impact the native wildlife of this state. It also gives the Department greater authority to regulate the use of live wildlife so as to reduce the abuse of wildlife privileges granted under special licenses. Though some of the amendments will create a greater workload for agency employees, the Department holds that the benefits of the proposed rulemaking will outweigh the costs. The Department also holds that the proposed amendments will benefit the general public by generally prohibiting use of wildlife or possession of wildlife in a manner that could threaten public health or safety. Oftentimes, people do not realize the potential harm that can be caused by wildlife if it is allowed to come into contact with them. The

Notices of Proposed Rulemaking

proposed amendments will also impact special license holders by requiring them to provide more information regarding the use of wildlife than they have had to provide in the past. Additional requirements and restrictions will be placed on those licenses whose holders have demonstrated a propensity to abuse their wildlife privileges, either through ignorance or misunderstanding of current live wildlife rules, or through outright violation of these rules. The Department, though, holds that the benefits to the state and to the resource outweigh the cost of the additional requirements. Some amendments will impact businesses that use live wildlife, particularly private game farms and businesses that use live wildlife that will become restricted. The Department has made amendments to shore up any potential for misinterpretation of rules under which some license holders have felt at liberty to use live wildlife contrary to the intent for which a license is issued. Addition of certain species of wildlife, such as frogs of the genus *Rana*, will also restrict the types of live animals that can be sold by pet traders; though representatives of the pet trade have indicated that they are prepared to use other non-threatening species of frog in their stores. Under this rulemaking, any individual that possesses an animal of a species that becomes restricted will also have to report it to the Department. In general, the Department does not believe that these amendments will significantly impact other political subdivisions, and will not lastingly impact businesses. Though some businesses will have to adopt different animals or practices to continue their trade, alternative lawful means exist to allow them to maintain their business. The proposed amendments will not impact either private or public employment, and will not lastingly impact businesses revenues. The Department holds that the potential cost to the state for addressing concerns generated by invasive wildlife species outweighs the short-term costs to businesses that deal in wildlife. The proposed rulemaking will not impact state revenues. Finally, the Department has determined that to address growing concerns related to the introduction of nonnative species, particularly in a state that has a continuously circulating population, there are no alternative means of achieving the objectives of the proposed rulemaking.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Carlos Ramirez, Rule Writer
Address: 2221 W. Greenway Rd. DORR
Phoenix, AZ 85023-4399
Telephone: (602) 789-3288, ext. 206
Fax: (602) 789-3677

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Written comments will be accepted at the above address until 30 days after this Notice is published. Public hearings to discuss this proposal will be held as follows:

Date: December 3, 2005
Time: 9:00 a.m.
Location: Arizona State Fairgrounds, Wildlife Building
1826 W. McDowell Rd.
Phoenix, AZ 85007

The Arizona Game and Fish Commission follows Title II of the Americans with Disabilities Act. The Commission does not discriminate against persons with disabilities who wish to make oral or written comments on proposed rulemaking or otherwise participate in the public comment process. Individuals with disabilities who need a reasonable accommodation (including auxiliary aids or services) to participate in the public comment process, or who require this information in an alternate form, may contact Dustin McKissen at (602)789-3288 ext. 201 (Voice); 1-800-367-8939 (TDD); 2221 W. Greenway Rd., Phoenix, Arizona 85023-4399. Requests should be made as soon as possible so that the Arizona Game and Fish Department will have sufficient time to respond.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

R12-4-101. Live Wildlife Definitions

~~3-4.~~ "Cervid" means a mammal classified as a Cervidae or member of the deer family found anywhere in the world, as defined in the taxonomic classification from Volumes I and II of Walker's Mammals of the World, Fifth Edition, 1999, and not including any later edition. A copy is available for inspection at any Department office.

~~7.11.~~ "Endangered or threatened" means wildlife that is listed in the Federal Endangered and Threatened Wildlife and Plants Act, 50 CFR 17.11 and 17.12, revised as of April 10, 1987 August 4, 2004 ~~not including any later amendments or editions, which is incorporated by reference. A copy of the list is on file with the Secretary of State and is available for inspection at any Department office, or it may be ordered from the Superintendent of Documents,~~

Notices of Proposed Rulemaking

U.S. Government Printing Office, Washington, D.C. 20402. A copy is available for inspection at all Department offices.

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 4. GAME AND FISH COMMISSION

ARTICLE 4. LIVE WILDLIFE

Section

- R12-4-401. Live Wildlife Definitions
- R12-4-402. Live Wildlife: ~~Prohibited~~ Unlawful Acts
- R12-4-403. Escaped or Released Live Wildlife
- R12-4-404. Possession of Live Wildlife Taken ~~on~~ Under an Arizona Hunting or Fishing License
- R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit
- R12-4-406. Restricted Live Wildlife
- R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife
- R12-4-408. Holding Wildlife for the Department
- R12-4-409. General Provisions and Penalties for Special Licenses
- R12-4-410. Aquatic Wildlife Stocking Permit
- R12-4-411. ~~Minnow~~ Live Bait Dealer's License
- R12-4-413. Private Game Farm License
- R12-4-414. Game Bird Shooting Preserve License
- R12-4-415. Game Bird Field Trial License
- R12-4-416. Game Bird Field ~~Trial~~ Training Permit
- R12-4-417. Wildlife Holding License
- R12-4-418. Scientific Collecting Permit
- R12-4-419. ~~Wildlife~~ Game Bird Hobby License
- R12-4-420. Zoo License
- R12-4-421. Wildlife Service License
- R12-4-423. Wildlife Rehabilitation License
- R12-4-424. White Amur Stocking and Holding License
- R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit ~~Prior to~~ Before the Effective Date of Article 4 or Any Subsequent Amendments
- R12-4-426. Possession of Primates
- R12-4-427. ~~Rehabilitation Exemption~~ Exemptions from Requirements to Possess a Wildlife Rehabilitation License
- R12-4-428. Captivity Standards
- R12-4-430. Importation, Handling, and Possession of Cervids

ARTICLE 4. LIVE WILDLIFE

R12-4-401. Live Wildlife Definitions

In addition to definitions given in A.R.S. § 17-101, and for the purposes of ~~Article 4~~ this Article, the following definitions apply: :

1. "Agent" means an individual that assists a special license holder in performing activities that are authorized by the special license to achieve the objectives for which the license was issued.
2. "Aquarium trade" means the commercial industry that lawfully trading trades in aquatic live wildlife that is not restricted live wildlife, and the its customers of that industry, when all aquatic wildlife is held for pet or ornamental uses only, in aquaria or in enclosed ponds with no opportunity for ingress or egress.
- 2-3. "Captive live wildlife" means live wildlife that is held in captivity, physically restrained, confined, or impaired, or deterred so that it is prevented to prevent it from unobstructed return escaping to the wild or movement moving freely in the wild.
- 3-4. "Cervid" means a mammal classified as a Cervidae or member of the deer family found anywhere in the world, as defined in the taxonomic classification from Volumes I and II of Walker's Mammals of the World, Fifth Edition, 1999, and not including any later edition. A copy is available for inspection at any Department office.
- 4-5. "Circus" means a scheduled event where a variety of entertainment is the principal business, primary purpose and

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

- attraction. "Circus" does not include animal displays or exhibits held as an attraction for a secondary commercial endeavor.
- ~~5-6.~~ "Collect" means to take wildlife alive under the provisions of a ~~Scientific Collecting Permit~~ scientific collecting permit.
7. "Commercial" means the buying or selling of wildlife or their parts, or the exchange of anything of monetary value for the use of wildlife.
8. "Domestic" means an animal species that does not exist in the wild, and includes animal species that have only become feral after they were released by humans that held them in captivity, or are individuals or populations that escaped from human captivity.
- ~~6-9.~~ "Educational display" means to display captive live wildlife to increase public understanding of wildlife biology, conservation, and management without requiring or soliciting payment from ~~the an~~ audience or an event sponsor. For the purposes of this Article, "to display for educational purposes" is synonymous with this definition.
- ~~7-10.~~ "Endangered or threatened" means wildlife that is listed in the Federal Endangered and Threatened Wildlife and Plants Act, 50 CFR 17.11 and 17.12, revised as of ~~April 10, 1987~~ August 4, 2004 not including any later amendments or editions, which is incorporated by reference. ~~A copy of the list is on file with the Secretary of State and is available for inspection at any Department office, or it may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. A copy is available for inspection at all Department offices.~~
- ~~8-11.~~ "Evidence of lawful possession" means any license or permit ~~allowing that allows~~ possession of ~~the specified a specific~~ live wildlife species or individual, or other documentation ~~establishing that establishes~~ lawful possession; ~~including~~. Other forms of documentation may include but are not limited to: a statement of nonrequirement for a license or permit for ~~the specified specific~~ live wildlife, ~~species or individual~~ granted by the country or state of origin.
- ~~9-12.~~ "Exhibit" means to display captive live wildlife in public, or to allow photography of captive live wildlife, for any commercial purpose.
13. "Exotic" means wildlife or its offspring that is not native to North America.
- ~~10-14.~~ "Fish farm" means a commercial operation designed and operated for propagating, rearing, or selling aquatic wildlife for any purpose ~~except the aquarium trade~~.
15. "Game farm" means a commercial operation that is designed and operated for the purpose of propagating, rearing, or selling terrestrial wildlife or the parts thereof for any purpose stated in R12-4-413.
16. "Hybrid wildlife" means an offspring from two different wildlife species or genera. Offspring from a wildlife species and a domestic animal species are not considered to be wildlife.
- ~~11-17.~~ "Live baitfish" means any species of live freshwater fish designated by Commission order as lawful for use in taking aquatic wildlife under R12-4-313.
- ~~12-18.~~ "Live bait" means ~~live~~, aquatic live wildlife used or intended for use in taking aquatic wildlife.
19. "Native" means wildlife or its offspring that occurred naturally within the present boundaries of Arizona before European settlement.
20. "Nonnative" means wildlife or its offspring that have not occurred naturally within the present boundaries of Arizona before European settlement.
21. "Photography" means any process that captures light to produce an exact image of wildlife or the parts thereof on another medium.
- ~~13-22.~~ "Propagate" means the ~~generation~~ production of offspring that qualify as wildlife from captive live wildlife parents.
- ~~14-23.~~ "Rehabilitated wildlife" means live wildlife that is injured, orphaned, sick, or otherwise debilitated ~~wildlife that and~~ is provided care to restore it to a healthy condition suitable for release to the wild or for lawful captive use.
- ~~15-24.~~ "Restricted live wildlife" means wildlife that ~~the Commission has determined is an actual or potentially significant threat to indigenous wildlife by competition, disease or parasites, habitat degradation, predation, or impact on population management; or an actual or potentially significant threat to public safety by disease, physical threat, property damage, or nuisance cannot be imported, exported, or possessed without a special license or lawful exemption. Restricted live wildlife are listed in R12-4-406.~~
- ~~16-25.~~ "Shooting preserve" means any operation where live wildlife is released for the purpose of hunting.
- ~~17-26.~~ "Special license" means any permit or license issued under ~~12 A.A.C. 4, Article 4,~~ authorizing this Article including any additional stipulations placed on the license that authorizes specific activities normally prohibited by A.R.S. § 17-306 and R12-4-402.
- ~~18-27.~~ "Stock" and "stocking" mean to release live aquatic wildlife into public or private waters other than the waters where taken.
19. "Threatened native wildlife" means any species listed in "Threatened Native Wildlife in Arizona," published by the Arizona Game and Fish Department. A copy is available from any Department office.
28. "Wildlife of special concern" means any species listed in "Wildlife of Special Concern," published by the Arizona Game and Fish Department. A copy is available for inspection at any Department office.
29. "Zoonotic" means a disease that can be transmitted to humans from other animals.

Notices of Proposed Rulemaking

R12-4-402. Live Wildlife: ~~Prohibited~~ Unlawful Acts

- A. ~~A person shall not import or transport any live wildlife into the state, or possess, offer for sale, sell, sell as live bait, trade, give away, purchase, rent or lease, display for any purpose, propagate, stock, or release within the state any live wildlife, or export any live wildlife, or kill any captive wildlife, or operate a shooting preserve, except as authorized by this Chapter or as defined in A.R.S. Title 3, Chapter 16. A person may exhibit lawfully possessed wildlife only as authorized by this Chapter or as defined in A.R.S. Title 3, Chapter 16. An individual shall not perform any of the following activities with live wildlife unless authorized by this A.A.C. Title 12, Chapter 4, Game and Fish Commission rules or A.R.S. Title 3, Chapter 16:~~
1. Import any live wildlife into the state;
 2. Export any live wildlife from the state;
 3. Transport, possess, offer for sale, sell, sell as live bait, trade, give away, purchase, rent, lease, display, exhibit, propagate, stock, or release live wildlife within the state; or
 4. Kill any captive live wildlife;
- B. ~~This rule is effective July 1, 2001. If an individual lawfully possesses wildlife, but holds it in a manner that poses an actual or potential threat to other wildlife, or the safety, health, or welfare of the public, the Department shall seize, quarantine, or hold the wildlife.~~

R12-4-403. Escaped or Released Live Wildlife

The Department may take any live wildlife ~~which that~~ that has been released ~~or which has escaped, escapes, or is likely to escape whether or not such wildlife was held pursuant to a special license, when if the wildlife is posing poses~~ an actual or potential threat to native wildlife or to the safety, health, or welfare of the public. An individual shall not release live wildlife under A.R.S. § 17-306, unless authorized by A.A.C. Title 12, Chapter 4, Game and Fish Commission rules. The Department may also take live wildlife as prescribed by this Section if the wildlife is held under a special license.

R12-4-404. Possession of Live Wildlife Taken ~~on~~ Under an Arizona Hunting or Fishing License

- A. ~~Wildlife may be taken from the wild alive by authority of an appropriate Arizona hunting or fishing license only when a Commission order specifies a live bag and possession limit for that species. Wildlife taken pursuant to this subsection may be possessed, transported, placed on educational display, propagated, and killed for personal use, or disposed of pursuant to subsection (B), except that live baitfish may be possessed and transported only in accordance with R12-4-316. An individual may take wildlife from the wild alive under a valid Arizona hunting or fishing license only if there is a Commission Order that prescribes a live bag and possession limit for that wildlife and the individual possesses the appropriate license. An individual may possess, transport, place on educational display, photograph, propagate, or kill for personal use any wildlife taken under an Arizona hunting or fishing license, except that live baitfish may be possessed and transported only in accordance with R12-4-316. An individual shall dispose of any wildlife taken under an Arizona hunting or fishing license as prescribed by subsection (B).~~
- B. ~~Wildlife and the progeny of wildlife possessed pursuant to this rule may only be disposed of by gift or as directed by the Department, except that wildlife not removed from the area where captured may be released. Lawfully possessed live wildlife may be exported. An individual that possesses wildlife and offspring of wildlife under this Section shall only dispose of the wildlife or its offspring by giving it as a gift, by exporting it, or as directed in writing by the Department. An individual shall not dispose of wildlife taken as prescribed by this Section or offspring of the wildlife by selling, bartering, trading, or exporting it for commercial purposes. Exported live wildlife and their offspring shall not be sold, bartered, purchased, rented, leased, offered for sale, or used for any commercial purpose. An individual shall not export live desert tortoises (*Gopherus agassizii*) from the state without written authorization from the Department. The Department shall only authorize an individual to export live desert tortoises to another jurisdiction where they can be legally possessed. An individual may release live wildlife possessed under this Section into the wild, but only if the wildlife is not removed from the area where it was taken.~~
- C. ~~A combined total of wildlife and the progeny of wildlife possessed pursuant to this rule shall not exceed the possession limit established by the current Commission order governing that species, except that the progeny of reptiles and amphibians may be held in captivity in excess of the possession limit for 12 months from the date of birth or hatching. Before or upon reaching 12 months of age, progeny of reptiles and amphibians in excess of the possession limit shall be disposed of by gift or as directed by the Department. An individual shall not exceed the possession limit of live wildlife established by Commission Order for that species. Offspring of wildlife possessed under this Section count towards the possession limit. If any offspring of amphibians or reptiles exceed the possession limit, they may be held in captivity for 12 months from the date of birth or hatching. Before or on the day the offspring of reptiles and amphibians reach 12 months of age, the individual that possesses them shall dispose of them by giving them as gifts or as directed by the Department.~~
- D. ~~This rule is effective January 1, 1995. An individual may propagate desert tortoises possessed under R12-4-407(A)(1), and may hold offspring in captivity for 24 months from the date of hatching. An individual shall dispose of desert tortoises at the end of the 24 months by giving them as gifts or as directed in writing by the Department.~~
- E. An individual that possesses live wildlife or offspring of wildlife under this Section shall report the wildlife to the Depart-

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

ment as prescribed under R12-4-425 if the wildlife becomes restricted under R12-4-406.

R12-4-405. Importing, Purchasing, and Transporting Live Wildlife Without an Arizona License or Permit

- ~~A. Lawfully possessed mammals, birds, and reptiles not listed in R12-4-406 may be imported without any license or permit from the Department. An individual may import mammals, birds, and reptiles not listed in R12-4-406 without any license or permit from the Department if the animals are lawfully possessed under a valid license, permit, or other form of authorization from another state, the United States, another country, or are possessed under a lawful exemption.~~
- ~~B. Lawfully possessed aquatic wildlife not listed in R12-4-406 may be imported without any license or permit from the Department, when it is intended for the aquarium trade as defined in R12-4-401, or for restaurants or markets licensed to sell food to the public where the aquatic wildlife is killed before transport from the restaurant or market. Aquatic wildlife being transported through the state shall be accompanied by authority to transport live aquatic wildlife granted by another state. Aquatic wildlife imported for any other purpose requires a special license or exemption granted pursuant to this Chapter. The aquarium trade may purchase live aquatic wildlife not listed in R12-4-406 from licensed fish farms. An individual may import live aquatic wildlife not listed in R12-4-406 without any license or permit from the Department under the following conditions:~~
- ~~1. The wildlife is lawfully possessed under a valid license, permit, or other form of authorization from another state, the United States, another country, or is possessed under a lawful exemption;~~
 - ~~2. The wildlife shall be used only for the aquarium trade or a fish farm, as defined in R12-4-401, or for restaurants or markets that are licensed to sell food to the public;~~
 - ~~3. If the wildlife is for the aquarium trade or a fish farm, the wildlife shall be accompanied by a valid license or permit issued by another state or the United States that allows the wildlife to be transported through this state;~~
 - ~~4. If the wildlife is for restaurants or markets, the wildlife shall be killed before it is transported from the restaurant or market, or if transported alive from the market shall be conveyed directly to its final destination for preparation as food; and~~
 - ~~5. If the individual is engaged in the aquarium trade and wishes to purchase aquatic live wildlife or an individual wishes to purchase aquatic live wildlife for restaurants or fish markets, the individual may do so if the wildlife is not listed in R12-4-406.~~
- ~~C. Aquatic live wildlife that is used in the aquarium trade shall not be used for any reason other than as a pet or in an ornamental display. The aquarium trade shall not use wildlife that is listed as restricted live wildlife under R12-4-406. Live aquatic wildlife that is used in the aquarium trade shall be kept in an aquarium or an enclosed pond that does not allow the wildlife to leave the aquarium or pond, and does not allow other live aquatic wildlife to enter.~~
- ~~D. An individual shall obtain an appropriate special license listed in R12-4-409(A) before importing aquatic live wildlife for any purpose not stated in subsection (B) of this rule. An individual may import aquatic live wildlife into this state if an exemption exists in A.A.C. Title 12, Chapter 4, Game and Fish Commission rules.~~
- ~~E. Wildlife lawfully imported without an Arizona license or permit, and their progeny, may be purchased, possessed, exhibited or displayed for any purpose, transported, propagated, traded, rented or leased, given away, sold, offered for sale, exported, and killed. An individual may purchase, possess, exhibit, transport, propagate, trade, rent, lease, give away, sell, offer for sale, export, or kill wildlife or aquatic wildlife or its offspring without an Arizona license or permit if the wildlife is lawfully imported and possessed as prescribed under subsections (A) or (B).~~
- ~~D F. This rule is effective January 1, 1995. An individual shall use and dispose of wildlife that is taken under an Arizona hunting or fishing license as prescribed by R12-4-404, or R12-4-417 and this Article, if applicable.~~

R12-4-406. Restricted Live Wildlife

- ~~A. For the purposes of this Section, "transgenic species" means any organism that has had genes from another organism put into its genome through direct human manipulation of that genome. Transgenic species do not include natural hybrids nor individuals that have had their chromosome number altered to induce sterility. A transgenic animal is considered wildlife if that animal is an offspring of a wildlife species.~~
- ~~B. With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, a special license or an exemption under Article 4 is required to possess restricted live wildlife or to engage in any activity prohibited by A.R.S. § 17-306 or R12-4-402: an individual shall possess an appropriate special license listed in R12-4-409(A) or act under a lawful exemption from the requirements of this Article in order to use wildlife listed in this Section for any activity prohibited by A.R.S. § 17-306 or R12-4-402. Exemptions from these requirements are listed in R12-4-316, R12-4-404, R12-4-405, R12-4-407, R12-4-425, and R12-4-427.~~
- ~~C. Requirements for the use of wildlife that occurs in the wild in this state and have been taken alive under the authority of a valid state hunting and fishing license are prescribed in R12-4-404 and R12-4-405.~~
- ~~D. Domestic animals, as defined in R12-4-401, are not subject to restrictions under A.R.S. § Title 17; A.A.C. Title 12, Chapter 4, Game and Fish Commission rules; or Commission Orders.~~
- ~~E. Hybrid wildlife, as defined in R12-4-401, that result from the interbreeding of at least one parent species of wildlife that is listed under this Section are regulated by this Section.~~

Notices of Proposed Rulemaking

E. Unless specified otherwise in this Article, all transgenic species as defined in R12-4-401 are restricted live wildlife.

~~**B-G.**~~ Unless specified otherwise, mammals listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401. The taxonomic classification from Volumes I and II of Walker’s Mammals of the World, Fifth Edition, 1999, and not including any later edition, is the authority in the following designations. A copy is available for inspection at any Department office.

1. All species of the genus *Didelphis*. Common name: American opossums.
2. All species of the order Insectivora. Common names include: Insectivores ~~or~~, shrews, hedgehogs, tenrecs, solenodons, and moles.
3. All species of the order Chiroptera. Common name: bats.
4. All species of the family Pongidae of the order Primates. Common names include: orangutans, chimpanzees, gorillas.
5. All species of the order ~~Edentata~~ *Xenarthra*. Common names include: edentates; or sloths, anteaters, and armadillos.
6. All species of the order Lagomorpha, except the Genus *Oryctolagus*. Common names include: pikas, rabbits, and hares. Genus *Oryctolagus*, containing domestic rabbits, is not wildlife.
7. All species of the following families of the order Rodentia. Common name: rodents.
 - a. The family Sciuridae. Common names: squirrels, chipmunks, marmots, woodchucks, and prairie dogs.
 - b. The family Geomyidae. Common name: pocket gophers.
 - c. The family Castoridae. Common name: beavers.
 - d. The family Erethizontidae. Common name: New World porcupines.
 - e. The family Capromyidae. Common names include: hutias, coypus, or nutrias.
8. All species of the order Carnivora. Common ~~name~~ names include: carnivores, skunks, raccoons, bears, foxes, and weasels. ~~*Canis familiaris*, domestic dogs; *Felis catus*, domestic cats; and *Mustela putorius furo*, domestic ferrets, are not wildlife.~~
9. All species of the following families of the order Artiodactyla. Common name: even-toed ungulates.
 - a. The family Tayassuidae. Common name: peccaries.
 - b. The family Cervidae. Common ~~name~~ names include: cervid; or deer family (including deer, elk, moose, wapiti, and red deer).
 - c. The family Antilocapridae. Common name: pronghorn.
 - d. The family Bovidae. Common names include: cattle, buffalo, bison, oxen, duikers, antelopes, gazelles, goats, and sheep, except that the following are not restricted:
 - i. The genus *Bubalus*. Common name: water buffalo.
 - ii. The genus *Bison*. Common name: bison; American bison or buffalo.
 - iii. ~~*Capra hircus*, domestic goats; *Ovis aries*, domestic sheep; and *Bos taurus*, domestic cattle, are not wildlife.~~

~~**E-H.**~~ Birds listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401.

1. The following species within the family Phasianidae. Common names: partridges, grouse, turkeys, quail, and pheasants.
 - a. ~~*Alectoris chukar*. Common name: chukar.~~
 - b. ~~*Callipepla californica*. Common name: California or valley quail.~~
 - e. *Callipepla gambelii*. Common name: Gambel’s quail.
 - ~~d.b.~~ *Callipepla squamata*. Common name: scaled quail.
 - e.c. *Colinus virginianus*. Common name: northern bobwhite. Restricted only in Units game management units 34A, 36A, 36B, and 36C as prescribed in R12-4-108.
 - f.d. *Cyrtonyx montezumae*. Common name: Montezuma, harlequin or Mearn’s quail.
 - ~~g.e.~~ *Dendragapus obscurus*. Common name: blue grouse.
 - ~~h.~~ ~~*Phasianus colchicus*. Common names: ringneck and whitewing pheasants.~~
2. The species *Rhynchopsitta pachyrhyncha*. Common name: thick-billed parrot.

~~**D-I.**~~ Reptiles listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401.

1. All species of the order Crocodylia. Common names include: gavials, caimans, crocodiles, and alligators.
2. The following species of the order Testudines. Common names include: turtles and tortoises.
 - a. All species of the family Chelydridae. Common name: snapping turtles.
 - b. All species of the ~~genera~~ genus *Gopherus* and *Xerobates* of the family Testudinidae. Common name: gopher tortoises, including the desert tortoise.
3. All species of the following families or genera of the order Squamata.
 - a. The family Helodermatidae. Common names include: Gila monster and Mexican beaded lizard.
 - b. The family Elapidae. Common names include: cobras, mambas, coral snakes, kraits, and Australian elapids.
 - c. The family Hydrophiidae. Common name: sea snakes.
 - d. The family Viperidae. Common names include: true vipers and pit vipers, including rattlesnakes.
 - e. The family Atractaspidae. Common name: burrowing asps.
 - f. The following species and genera of the family Colubridae:
 - i. *Dispholidus typus*. Common name: boomslang.

Notices of Proposed Rulemaking

ii. *Thelotornis kirtlandii*. Common ~~name~~ names include: bird snake or twig snake.

iii. *Rhabdophis*. Common ~~names~~ name: ~~keelbacks~~ keelback.

iv. *Boiga irregularis*. Common name: brown tree snake.

E J. Amphibians listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401. The following species within the order Anura, common names frogs and toads.

1. All species of the genus *Xenopus*. Common name: clawed frogs.

2. The species *Bufo horribilis*, *Bufo marinus*, *Bufo paracnemis*. Common names include: giant or marine toads.

3. All species of the genus *Rana*. Common names include: leopard frogs and bullfrogs. Bullfrogs possessed under A.R.S. § 17-102 are exempt.

F K. Fish listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401.

1. ~~American Arctic~~ grayling, the species *Thymallus arcticus*.

2. Bass, all species of the family Serranidae.

3. Bighead carp, the species *Aristichthys nobilis*.

4. Black carp, the species *Mylopharyngodon piceus*.

5. Bony tongue, the species *Arapaima gigas*.

6. Bowfin, the species *Amia calva*.

7. Catfish, all species of the family Ictaluridae.

8. Crucian carp, the species *Carassius carassius*.

9. Electric catfish, the species *Malapterurus electricus*.

10. Electric eel, the species *Electrophorus electricus*.

11. European whitefish or ide, the species *Leuciscus idus* and *Idus idus*.

12. Freshwater drum, the species *Aplodinotus grunniens*.

13. ~~Freshwater stingray~~ stingrays, all species of the family Potamotrygonidae.

14. Gars, all species of the family Lepisosteidae.

15. Goldeye, mooneye, and all species of the family Hiodontidae.

16. Herring, all species of the family Clupeidae.

17. Indian carp, all of the species *Catla catla*, *Cirrhina mrigala*, and *Labeo rohita*.

18. Lampreys, all species of the family Petromyzontidae.

19. ~~Mooneye, all species of the family Hiodontidae.~~

20. Nile perch, all species of the genus *Lates* and *Luciolates*.

21. Pike or pickerels, all species of the family Esocidae.

22. Pike topminnow, the species *Belonesox belizanus*.

23. Piranha, all species of the genera ~~*Serrasalmus*, *Serrasalmo*, *Phylocentrus*, *Teddyella*, *Rooseveltiella*, and *Pygopristis*~~ *Serrasalmus*, *Serrasalmo*, *Phylocentrus*, *Teddyella*, *Rooseveltiella*, and *Pygopristis*.

24. Rudd, the species *Scardinius erythrophthalmus*.

25. Shad, all species of the family Clupeidae except threadfin shad, species *Dorosoma petenense*.

26. ~~Sharks, all species, both marine and freshwater, of the orders Hexanchiformes, Heterodontiformes, Squaliformes, Pristiophoriformes, Squatiniformes, Orectolobiformes, Lamniformes, and Carcharhiniformes, except for all species of the families Hemiscylliidae, Orectolobidae, Brachaeluridae, and Triakidae; genera of the family Scyliorhinidae: *Aulohalaerulus*, *Halaerulus*, *Haploblepharus*, *Poroderma*, and *Scyliorhinus*; and genera of the family Parascylliidae: *Cirroscyllium* and *Parascyllium*.~~

27. Silver carp, the species *Hypophthalmichthys molitrix*.

28. Snakehead, all species of the family ~~*Ophichthidae*~~ *Channidae*.

29. South American parasitic catfish, all species of the family Trichomycteridae and Cetopsidae.

30. Sunfish, all species of the family Centrarchidae.

31. Temperate basses of the family Moronidae.

32. Tetras, all species of the genus *Astyanax*.

33. Tiger fish, the species *Hoplias malabaricus*.

34. Trout, all species of the family Salmonidae.

35. White amur or grass carp, the species *Ctenopharyngodon* ~~*idellus*~~ *idella*.

36. Walking or airbreathing catfish, all species of the family Clariidae.

37. Walleye, ~~the and pike perches~~, all species *Stizostedion vitreum* of the family Percidae.

38. ~~White perch, the species *Morone americanus*.~~

39. ~~Yellow perch, the species *Perca flavescens*.~~

40. ~~Rudd, the species *Scardinius erythrophthalmus*.~~

G L. Crustaceans listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401.

1. Asiatic mitten crab, the species *Eriocheir sinensis*.

2. Australian crayfish and all freshwater species within the families Astacidae, Cambaridae, and Parastacidae.

H M. Mollusks listed below are ~~“restricted live wildlife”~~ restricted live wildlife as defined in R12-4-401.:

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

1. Asian clam, the species *Corbicula fluminea*.
2. New Zealand mud snail, the species *Potamopyrgus antipodarum*.
3. Quagga mussel, the species *Dreissena bugensis*.
4. Rosy wolfsnail, the species *Euglandina rosea*.
5. Zebra mussel, the species *Dreissena polymorpha*.

R12-4-407. Exemptions from Special License Requirements for Restricted Live Wildlife

A. ~~The Commission waives the requirement that a person obtain a special license for lawfully possessed restricted live wildlife as follows~~ An individual is not required to possess a special license to lawfully possess restricted live wildlife under the following exemptions as prescribed by the Commission:

1. ~~Desert tortoises *Xerobates (Gopherus) agassizii* possessed without a special license before April 28, 1989, may be possessed, transported, and given away. Desert tortoises possessed under this Section may be propagated, and offspring may be held in captivity for 24 months from the date of hatching, if they are disposed of by gift or as directed by the Department. The person receiving a desert tortoise given away under this Section is also exempt from special license requirements. An individual may possess, transport, or give away a desert tortoise (*Gopherus agassizii*) without a special license if that individual possessed it before April 28, 1989. Desert tortoises possessed before this date may be propagated, and offspring may be held in captivity for 24 months from the date of hatching. That individual shall dispose of the offspring of desert tortoises before or at the end of the 24 months by giving them as a gift or as directed in writing by the Department. An individual that receives a desert tortoise that is given away under this Section is also exempt from the special license requirements. An individual may not export a desert tortoise from this state unless authorized in writing by the Department.~~
2. ~~A licensed veterinarian may possess the wildlife while furnishing~~ providing ~~medical care and may release rehabilitated wildlife as directed by the Department, if:~~
 - a. ~~Records of restricted live wildlife that are kept under the requirements of the Veterinary Medical Examining Board and are subject to inspection by Department game rangers available for inspection by an authorized Department employee; and~~
 - b. ~~The Commission or Department assumes no financial responsibility for any care provided, except care authorized by the Department.~~
3. ~~Wildlife may be imported, possessed, and exported if the wildlife is transported through the state within 72 continuous hours, the transportation is accomplished by one person without transfer or sale, and the wildlife is accompanied by evidence of lawful possession as defined in R12-4-401. An individual may import, possess, and export restricted live wildlife if that individual:~~
 - a. Transports the wildlife through the state within 72 continuous and consecutive hours;
 - b. Ensures that only one individual transports the wildlife, whether it be themselves or another individual;
 - c. Ensures that the wildlife is neither transferred nor sold to another individual; and
 - d. Ensures that the wildlife is accompanied by evidence of lawful possession, as defined in R12-4-401.
4. ~~With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, wildlife may be imported, transported, possessed, exhibited, and exported for a government-authorized state or county fair, or by a circus, or imported, possessed, transported and exported for the purpose of filming for television, movies, or commercials, if the wildlife an individual may import, transport, possess, exhibit, and export restricted live wildlife for a government-authorized state or county fair or circus; or may import, possess, transport, and export the wildlife for the purpose of photography. An individual may perform any of these activities if the individual:~~
 - a. ~~Is accompanied by evidence of lawful possession, as defined in R12-4-401~~ Possesses evidence of lawful possession as defined in R12-4-401 for the wildlife;
 - b. ~~Is not in the state for more than 60 consecutive days~~ Ensures that the evidence of lawful possession accompanies the wildlife stated on that evidence;
 - c. ~~Is maintained under complete control and prevented from coming into contact with the public. Ensures that the wildlife does not come into physical contact with the public;~~
 - d. Keeps the wildlife under complete control by safe and humane means; and
 - e. Ensures that the wildlife is not in this state for more than 60 consecutive days.
5. ~~With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, wildlife may be imported, transported, possessed, and displayed for advertising purposes other than filming, and exported, if the wildlife an individual may import, transport, possess, exhibit for advertising purposes other than photography, and may export wildlife if that individual:~~
 - a. ~~Is accompanied by evidence of lawful possession, as defined in R12-4-401~~ Ensures that the wildlife is accompanied by evidence of lawful possession as defined in R12-4-401;
 - b. ~~Is not in the state for more than 10 consecutive days, and the public is not charged a fee to view the wildlife~~ Maintains the wildlife under complete control by safe and humane means;

Notices of Proposed Rulemaking

- c. ~~Is maintained under complete control and prevented from coming into contact with the public. Prevents the wildlife from coming into contact with the public, or being photographed with the public;~~
- d. Does not charge a fee to the public to view the wildlife; and
- e. Exports the wildlife from the state within 10 days of importation.
- 6. ~~Game fish may be imported and transported to restaurants or markets licensed to sell food to the public, if the game fish being sold are killed before transport from the restaurant or market. While in the possession of the restaurant or market, the fish may be displayed for sale, offered for sale, and sold.~~
- 7. ~~Wildlife is taken alive under and is possessed in compliance with R124404 or R124427. An individual may possess restricted live wildlife that is taken alive under R12-4-404, R12-4-405, and R12-4-427, but must also possess it as prescribed by those Sections.~~
- 8 ~~7~~. ~~An Arizona ~~falconer~~ sport falconry license is not required for a visiting nonresident falconer hunting on a valid Arizona hunting license if the falconer is licensed in the falconer's state of residency.~~
- 9 ~~8~~. ~~Wildlife may be imported, purchased, possessed, transported, traded, given away, propagated, killed, and exported by medical or scientific research facilities registered by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare, revised January 2000, not including any later amendments or editions, which is incorporated by reference in this Section. A copy is on file with the Secretary of State and is available for inspection at any Department office, or it may be ordered from the United States Department of Agriculture, Marketing and Regulatory Programs, Animal and Plant Health Inspection Service, Animal Care, Western Region, 9580 Micon Avenue Suite J, Sacramento, CA 95827-2623, 916-857-6205. An individual may import, purchase, possess, transport, trade, give away, propagate, kill, and export wildlife if the individual is doing so for a medical or scientific research facility that is registered by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare, revised January 2000, not including any later amendments or editions, which is incorporated by reference in this Section. A copy is available for inspection at any Department office, or it may be ordered from the United States Department of Agriculture, Marketing, and Regulatory Programs, Animal and Plant Health Inspection Service, Animal Care, Western Region, 9580 Micon Ave., Suite J, Sacramento, CA 95827-2623, (916) 857-6205.~~
- 10 ~~9~~. ~~Crayfish may be imported and transported to restaurants or markets licensed to sell food to the public, if the crayfish being sold are killed before transport from the restaurant or market. While in the possession of the restaurant or market, the live crayfish may be displayed for sale, offered for sale, and sold. An individual may import and transport live game fish and crayfish directly to restaurants or markets that are licensed to sell food to the public.~~
- 11 ~~10~~. ~~Restaurants and markets that are licensed to sell food to the public may possess, exhibit, offer for sale, and sell live game fish or crayfish. Live game fish and crayfish shall be killed before they are transported from the restaurant or market.~~
- 11. ~~Freshwater crayfish (families Astacidae, Cambaridae, and Parastacidae) possessed before January 1, 2001, may be possessed alive, propagated, and their progeny held without special license. Live freshwater crayfish may not be transported, sold, offered for sale, given away, or released, except under this Section and R12-4-316. An individual may possess and propagate live freshwater crayfish (families Astacidae, Cambaridae, and Parastacidae) and their offspring without a special license, if the crayfish were possessed before January 1, 2001. An individual may not transport, sell, offer for sale, give away, or release live freshwater crayfish except as allowed under this Section or R12-4-316.~~
- B. ~~An exemption granted by this Section is not valid for any wildlife protected by federal law or rule unless supported by federal permission or documentation rendering the exemption lawful. This Section does not prescribe an exemption for wildlife that is protected by federal law or rule, unless the federally-protected wildlife is possessed under federal permission or documentation that renders the exemption lawful.~~

R12-4-408. Holding Wildlife for the Department

- A. ~~A ~~Game Ranger~~ game ranger may authorize an individual to possess and or transport live wildlife on behalf of the Department if the wildlife is needed as evidence in a pending civil or criminal proceeding.~~
- B. ~~With the exception of live cervids, a designated Department employee has the authority to ~~authorize~~ allow an individual to possess and transport captive live wildlife ~~on a temporary basis not to exceed for up to~~ 72 hours.~~
- C. ~~The Director has the authority to ~~authorize~~ allow an individual to hold a live cervid for the Department.~~

R12-4-409. General Provisions and Penalties for Special Licenses

- A. Special licenses are listed as follows:
 - 1. Aquatic wildlife stocking permit, prescribed by R12-4-410;
 - 2. Game bird field training permit, prescribed by R12-4-416;
 - 3. Game bird field trial license, prescribed by R12-4-415;
 - 4. Game bird hobby license, prescribed by R12-4-419;
 - 5. Game bird shooting preserve license, prescribed by R12-4-414;
 - 6. Live bait dealer's license, prescribed by R12-4-411;

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

7. Private game farm license, prescribed by R12-4-413;
 8. Scientific collecting permit, prescribed by R12-4-418;
 9. Sport falconry license, prescribed by R12-4-422;
 10. White amur stocking and holding license, prescribed by R12-4-424;
 11. Wildlife holding license, prescribed by R12-4-417;
 12. Wildlife rehabilitation license, prescribed by R12-4-423;
 13. Wildlife service license, prescribed by R12-4-421; and
 14. Zoo license, prescribed by R12-4-420.
- B.** The Department shall issue special licenses as defined in R12-4-401, if application is made and criteria are met as prescribed in the rule governing the specific special license. The Department shall either grant or deny a special license within the administrative completeness review time frame and the overall time frame listed for the special license in R12-4-106 and in a manner consistent with A.R.S. Title 41, Chapter 6, Article 7.1. During the administrative completeness review time frame, the Department may return to the applicant, without denial, any incomplete application that is lacking information required by the rule governing the specific special license. Each returned application shall be accompanied by written notice stating what information the applicant failed to provide. The administrative completeness review time frame and the overall time frame listed for the special license in R12-4-106 are suspended from the date on the notice until the date that the Department receives the missing information from the applicant. During the substantive review time frame, the Department may make one comprehensive written request for additional information. The Department and the applicant may mutually agree in writing to allow the agency to submit supplemental requests for additional information. The substantive review time frame and the overall time frame listed for the special license in R12-4-106 are suspended from the date on the request until the date that the Department receives the additional information from the applicant. A special license is not valid for any wildlife protected by federal law or regulation unless supported by federally issued documentation rendering the licensed activity lawful. An applicant for any special license listed in subsection (A) shall submit an application to the Department for that license according to the Section that prescribes requirements for that special license. Applications for special licenses are available at any Department office. The Department shall either grant or deny a special license within the overall time frame prescribed for that special license under R12-4-106, and in a manner consistent with A.R.S. Title 41, Section 6, Article 7.1. By signing the application, the applicant attests that they are authorized or have permission to conduct special license activities at any locations specified in the application.
- B.** All special licenses expire on December 31 for the year issued unless otherwise specified in the governing rule. If application for a new special license is not made by the expiration date, live wildlife possessed under the expired license is unlawfully possessed and is subject to seizure by the Department. If application for a new special license is made on or before the expiration date, the existing license remains valid until the Department makes a final determination to grant or deny the special license, and, in the event that the application is denied, until the last day for seeking a review of the final determination.
- C.** The Department shall deny a special license if the applicant knowingly provides false information upon application. Any special license so obtained is void and of no effect from the date of issuance. In addition to any criteria prescribed by a special license's governing Section, the Department shall deny a special license to an applicant if:
1. The applicant's live wildlife privileges are revoked or suspended in this state, any other state, or by the United States;
 2. The applicant has been convicted of illegally holding or possessing live wildlife within three years of applying for a special license;
 3. The applicant knowingly provides false information on an application; or
 4. The applicant submits an incomplete application.
- D.** The Department shall provide written notice to an applicant whose application is denied stating the reason for denial with references to the statutes or rules on which the denial is based. The applicant may appeal the denial to the Commission as prescribed in A.R.S. §§ 411092-02 through 411092-12. If an individual obtains a special license despite meeting any criteria for denial, the license shall be void and of no effect from the date of issuance. If an applicant is denied a special license listed in subsection (A), the Department shall provide a written notice to the applicant that states the reason for denial with references to the statutes or rules on which the denial is based. The applicant may appeal the denial to the Commission as prescribed in A.R.S. Title 41, Section 6, Article 10.
- E.** Special license holders or licensees shall keep records and submit reports as required by the rule governing their special license. The licensee shall exhibit the records to any Department game ranger upon reasonable request. Special license holders are not exempt from any municipal, county, state or federal laws, rules, ordinances or statutes. A special license does not authorize an individual to engage in any activity using wildlife if the wildlife is protected by federal regulation. A special license holder may only engage in authorized activities using federally-protected wildlife if the license holder possesses a valid license, permit, or other form of documentation issued by the United States that authorizes the license holder to use that wildlife in a manner consistent with the special license.
- F.** Facilities of special license holders are subject to reasonable inspection by a game ranger for compliance with any requirements imposed by this Article. A routine inspection is not reasonable if the game ranger has inspected another facility holding wildlife of the same class within the previous 72 hours and the game ranger has had contact with the wildlife or

Notices of Proposed Rulemaking

~~there is reason to believe disease may have been present at the other facility. The Department has the authority to place additional stipulations on a special license at the time of application or a special license renewal if it becomes necessary to do so in order to conserve wildlife populations, prevent introduction and proliferation of wildlife diseases, prevent wildlife from escaping, or for public health or safety.~~

- ~~G.~~ A special license holder shall keep live wildlife in a facility according to the captivity standards prescribed by R12-4-428, or if applicable, as otherwise required by the Section that prescribes captivity requirements under the special license. The Department may authorize one of its employees to make a reasonable inspection of a facility to ensure that it complies with any and all requirements prescribed by this Article. Such an inspection must ensure that it does not inadvertently transmit disease among facilities.
- ~~H.~~ A special license holder shall keep records according to the Section that prescribes requirements for the special license. The license holder shall make the records available for inspection to any authorized Department employee upon reasonable request.
- ~~G I.~~ If a disease, as determined by a person with relevant expertise, or other emergency condition exists that poses an immediate threat to the public or the welfare of wildlife, including the wildlife held under a special license, or the public, as determined by a person with relevant expertise, the Department shall immediately order a cessation of operation under the special license and, if necessary, order humane disposition or quarantine of any contaminated or threatened wildlife. The licensee license holder shall perform disease testing, submit biological samples to the Department or its designee, quarantine the wildlife, or destroy the wildlife as directed by the Department. The licensee license holder shall ensure that any disease giving rise to an emergency condition under this subsection is diagnosed by a person or persons an individual or individuals professionally certified to make the diagnosis. Once operation has ceased and an emergency no longer exists, subsection (H J) applies.
- ~~H J.~~ If a condition exists, including disease or any violation of this Article, that poses a threat to the welfare of wildlife, including the wildlife held, or the public, but the threat does not constitute an emergency, the Department shall provide the licensee license holder a written notice of the condition, by certified mail or personal service, specifying a reasonable time for the licensee license holder to cure the noticed condition. Failure of the licensee license holder to cure the noticed condition within the time specified by the Department is a violation under subsection (I K). If a licensee receives three notices under this subsection for the same condition within a two-year period, the Department shall treat the third notice as a failure to cure.
- ~~I K.~~ The Department shall take any of the following actions against a person for violation of any provision of this rule; the rule governing a specific special license; A.R.S. § 132908 relating to criminal nuisance; A.R.S. § 132910; for a conviction of any other criminal offense involving cruelty to animals; for refusal to permit reasonable inspection of facilities, wildlife, or required records; or for failure to keep required records or submit required reports to the Department:
 - ~~1. Filing of criminal charges.~~
 - ~~2. Suspension of authority of a licensee or any agent of the licensee to hold wildlife under special license for the remainder of the validity of the license period.~~
 - ~~3. Seizure of any wildlife held under the special license, and its humane disposition except that such wildlife shall not be killed pending appeal by the licensee.~~
 - ~~4. Denial of subsequent application for a special license for a period not to exceed five years.~~The Department has the authority to do any or all of the following as it deems necessary: file criminal charges; suspend a special license; seize, or seize in place any wildlife held under a special license, and unless the license holder appeals the conviction, humanely dispose of the wildlife, if a special license holder:
 - 1. Violates any provision of this Section;
 - 2. Violates any provision of any special license that the individual possesses, including any stipulations applied by the Department;
 - 3. Violates A.R.S. § 13-2908, relating to criminal nuisance;
 - 4. Violates A.R.S. § 13-2910, relating to cruelty to animals;
 - 5. Is convicted of any other criminal offense involving cruelty to animals;
 - 6. Refuses to allow reasonable inspection of facilities, wildlife, or required records; or
 - 7. Fails to keep records or submit reports if required by this Section or the Section that governs any special license, listed in subsection (A), that the individual possesses.
- ~~J L.~~ A person may appeal Department actions identified in subsections (I)(2), (I)(3), and (I)(4) to the Commission as prescribed in A.R.S. §§ 411092.01 through 411092.12. An individual may appeal to the Commission any Department action listed in subsection (K), except filing of criminal charges, as prescribed by A.R.S. Title 41, Section 6, Article 10.
- ~~M.~~ All special licenses listed in subsection (A) expire on December 31 for the year issued unless otherwise specified in the governing Section. If the special license holder does not submit an application to the Department for a new license by the date that the license expires, any live wildlife possessed under the license is considered unlawfully possessed, and the Department has the authority to seize it. If the special license holder submits an application for a new license on or before the date that the license expires, the license holder's current license remains valid until the Department grants or denies the new special license. If the Department denies the new license, and the license holder appeals the denial to the Com-

mission as prescribed by subsection (D), the license holder may continue to hold the wildlife until the date that the Commission makes its final decision on the denial.

- N.** If the special license holder chooses to renew the license, the license holder shall submit an application for a new license as required by the governing Section.
- O.** If required by the governing Section, a special license holder shall submit an annual report to the Department before January 31 of each year on activities performed under the license for the previous calendar year. If the license holder is acting as a representative of an institution, organization, or agency for the purposes of the special license, the required report is due within 30 days after the license holder's termination of affiliation with that entity. The special license holder shall submit the following information and any additional information required by the governing Section.
1. The license holder's name, address, telephone number, and special license number;
 2. The number and species of all restricted live wildlife obtained, and the date when it was obtained;
 3. The source of all restricted live wildlife obtained, and the date when it was obtained;
 4. The number of offspring propagated by all restricted live wildlife; and
 5. If applicable, the number, species, and date of disposition and manner of disposition of all wildlife, including the names and addresses of individuals to whom the wildlife was sold, bartered, or given, if authorized.

R12-4-410. Aquatic Wildlife Stocking Permit

- A.** An aquatic wildlife stocking permit allows an individual to perform any ~~or all~~ of the following: import, purchase, ~~possession~~ possess, transport and ~~stocking of the stock~~ any species designated on the permit at the location specified on the permit.
- B.** ~~The following criteria are requisite to approval of application for permit:~~
- ~~1. Applications for stocking aquatic wildlife which have not previously been introduced into the state or do not occur at the location where the stocking is to occur shall include a written proposal which must adequately address biological and socioeconomic ramifications of the introduction. A determination by the Department that negative impact on Arizona wildlife may result from issuance of the permit shall be grounds for denial of the permit. The proposal shall include:~~
 - ~~a. Purpose for introducing species;~~
 - ~~b. Anticipated benefits from introducing species;~~
 - ~~c. Anticipated adverse economic impacts from introduced species;~~
 - ~~d. Anticipated dangers to indigenous or game fish from introduced species;~~
 - ~~e. Anticipated ecology problems with introducing species;~~
 - ~~f. Anticipated diseases inherent to introduced species;~~
 - ~~g. Anticipated hybridization concerns with introducing species;~~
 - ~~h. Suggestions for post introduction evaluation of status and impacts of introduced species.~~
 - ~~2. Aquatic wildlife and live eggs, fertilized eggs, and milt shall be obtained from a licensed Arizona fish farm operator or from a private nonecommercial fish pond or from a fish farm located outside Arizona which has been certified free of the diseases and causative agents specified in subsection (D).~~
 - ~~3. The aquatic wildlife to be stocked shall be compatible with, and pose no threat to, any wildlife within the drainage or area where the stocking is to occur.~~
- C.** ~~Application shall be made on forms provided by the Department, by the person requesting that the water be stocked. Applications are available from any Department office. An applicant shall apply for an aquatic stocking permit on forms provided by the Department. Applications are available at any Department office. An applicant shall provide the following on the application:~~
- ~~1. Application requires the following to be provided by the applicant:~~
 - ~~a. Name and address of applicant;~~
 - ~~b. Name and address of business, if applicable;~~
 - ~~c. Name and address of suppliers;~~
 - ~~d. Name and legal description of water to be stocked;~~
 - ~~e. Drainage;~~
 - ~~f. Planned date of stocking;~~
 - ~~g. Species of aquatic wildlife to be stocked;~~
 - ~~h. Any written proposal required at subsection (B) of this rule;~~
 - ~~i. Signature of applicant.~~
 - ~~2. The Department shall issue a stocking permit or deny the application for stocking aquatic wildlife not previously introduced within six months of receiving the application; such applicants shall be advised within 10 calendar days of application if the extended time period will be required. For all other applicants, the Department shall issue a permit or deny the application within 30 calendar days. Authorization will not exceed 20 days and is valid only during the dates shown on the permit.~~
1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;

Notices of Proposed Rulemaking

2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business;
 3. The wildlife species, the number of animals per species, and the approximate size of the wildlife that will be used under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species;
 4. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical location of the holding site, including river drainage, township, range, and section. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
 5. A detailed description or diagram of the facilities where the applicant will hold the wildlife;
 6. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife;
 7. The date wildlife will be stocked, or dates if stocking will take more than one day;
 8. If the applicant is applying for an aquatic wildlife stocking permit to stock wildlife in an area where the wildlife has not already been introduced, where the wildlife is not currently established, or to stock wildlife that conflicts with the Department's efforts to conserve wildlife, a typewritten, computer or word processor printed, or legibly handwritten proposal that clearly states:
 - a. The purpose for introducing the aquatic live wildlife species;
 - b. The anticipated benefits from introducing the aquatic live wildlife species;
 - c. The potential adverse economic impacts of introducing the aquatic live wildlife species;
 - d. The potential dangers the introduced species could create for native and game fish, including whether or not the introduced species is compatible with native or game fish;
 - e. The potential ecological problems that the introduced species could create;
 - f. The diseases and parasites inherent in or associated with the introduced species;
 - g. The anticipated hybridization concerns with introducing the species; and
 - h. Any suggestions to evaluate the status and impact of the species after it is introduced; and
 9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- DC.** Live fish and eggs, fertilized eggs, and milt imported into the state must be certified free of the following diseases and causative agents when applicable to the species involved. The certification shall be based on a physical inspection of the fish farm of origin within the 12 months preceding the shipment. The inspection shall be conducted by a fish health inspector or fish pathologist certified by the American Fisheries Society. A copy of the certification shall accompany each shipment.
1. Live fish and eggs, fertilized eggs, and milt:
 - a. Causative agent: egtved virus. Disease: VHS, viral hemorrhagic septicemia of salmonids.
 - b. Causative agent: infectious hematopoietic necrosis virus. Disease: IHN, infectious hematopoietic necrosis of salmonids.
 - c. Causative agent: infectious pancreatic necrosis virus. Disease: IPN, infectious pancreatic necrosis of salmonids.
 - d. Causative agent: Ceratomyxa shasta. Disease: ceratomyxosis of salmonids.
 - e. Causative agent: Rhabdovirus carpio. Disease: spring viremia of carp. Certification is required in this case only when the original origin of the shipment is from outside the United States.
 - f. Causative agent: Renibacterium salmoninarum. Disease: BKD, bacterial kidney disease of salmonids.
 2. Live fish only:
 - a. Causative agent: Aeromonas salmonicida. Disease: furunculosis.
 - b. Causative agent: Myxobolus cerebralis. Disease: whirling disease of salmonids.
- An aquatic wildlife stocking permit holder shall stock wildlife only on the date or dates stated on the permit. An aquatic wildlife stocking permit holder is only authorized to stock wildlife for 20 consecutive days.
- D.** The Department shall issue an aquatic wildlife stocking permit in compliance with R12-4-106. The Department shall deny a wildlife stocking permit if the applicant proposes to use aquatic wildlife that is not compatible with or poses a threat to any wildlife within the drainage or area where the stocking is to occur. If the Department determines that issuance of the permit will result in a negative impact to state wildlife, the Department shall deny the permit. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D).
- E.** An aquatic wildlife stocking permit holder shall obtain all aquatic wildlife, live eggs, fertilized eggs, and milt from a licensed fish farm operator or a private noncommercial fish pond that has been certified free of the diseases and causative agents specified by any additional stipulation placed on the permit by the Department at the time of application or permit renewal, as authorized by R12-4-409(F). Certification is based on a physical inspection of the fish farm or fish pond of origin performed not more than 12 months before the wildlife or biological material is shipped. The Department has the authority to require that an inspection be performed sooner than 12 months. The inspection shall be performed by a quali-

Notices of Proposed Rulemaking

fied fish health inspector or fish pathologist. The inspection shall be performed at the fish farm or fish pond where the wildlife or biological material is held before it is shipped. A copy of the certification shall accompany each shipment.

F. Native aquatic wildlife species shall be obtained and disposed of as directed by the Department.

~~**E G.**~~ The **An** aquatic wildlife stocking permit holder is subject to the provisions of R12-4-409 and R12-4-428.

~~**F.**~~ This rule is effective January 1, 1995.

R12-4-411. Minnow Live Bait Dealer's License

A. A minnow live bait dealer's license allows an individual to perform any or all of the following: import, transport, purchase, possession possess, display exhibit for sale, offer for sale, sell as live bait, kill, trade, or export of any or all of the following live aquatic live wildlife as bait:

1. Fathead minnow, ~~Pimephales promelas~~ *Pimephales promelas*;
2. Golden shiner, ~~Notemigonus crysoleucas~~ *Notemigonus crysoleucas*;
3. Goldfish, ~~Carassius auratus~~ *Carassius auratus*;
4. Mosquito fish, ~~Gambusia affinis~~ *Gambusia affinis*;
5. Red shiner, ~~Notropis lutrensis~~ *Cyprinella lutrensis*;
6. Threadfin shad, ~~Dorosoma petenense~~ *Dorosoma petenense*;
7. Waterdogs, *Ambystoma tigrinum*, except in that portion of Santa Cruz County lying east and south of State Highway 82, or that portion of Cochise County lying west of the San Pedro River and south of State Highway 82.

B. A minnow dealer's license allows the take for sale, transport, and sale of waterdogs from the waters of Arizona in compliance with Commission order.

~~**C.**~~ An applicant for a minnow dealer's license shall submit:

1. One application for each place of business. Each place of business is licensed separately; and
2. One application for each person taking waterdogs for sale.

~~**D.**~~ An applicant for a minnow live bait dealer's license shall apply on a form provided by the Department and available from any Department office. The Department shall issue the license or deny the application within 30 calendar days. The applicant shall provide the following information

1. Name of applicant;
2. Date of birth;
3. Mailing address;
4. Location where aquatic wildlife will be held and sold;
5. Species of aquatic wildlife to be sold; and
6. Signature of applicant.
 1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
 2. The name, address, and telephone number of the applicant's business;
 3. The wildlife species and the number of animals per species that will be sold under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species;
 4. The name, address, and telephone number of the location where the wildlife will be held and sold. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
 5. A detailed description or diagram of the facilities where the applicant will hold the wildlife;
 6. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife; and
 7. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.

C. The Department shall issue a live bait dealer's license in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D).

~~**E D.**~~ A person may import live baitfish specified in subsection (A) from California and Nevada without accompanying certification that the fish are free from disease, or import live baitfish from any other state if accompanied by certification that the fish are free of furunculosis. A live bait dealer's license holder shall obtain live baitfish from a facility that is certified free of the diseases and causative agents specified in any stipulations placed on the permit by the Department as authorized by R12-4-409(F).

E. To receive certification that a facility is free of diseases or causative agents specified in any stipulations that may be placed on the license, the operator of the facility shall ensure that:

1. The inspection is performed by a qualified fish health inspector or fish pathologist;
2. The inspection is performed at the facility where the wildlife is held before it is shipped; and
3. The inspection is performed not more than 12 months before the wildlife is shipped. The Department has the authority to require that an inspection be performed sooner than 12 months.

F. A minnow live bait dealer's license is subject to the provisions of R12-4-409 and R12-4-428.

~~**G.**~~ This rule is effective May 25, 2001.

Notices of Proposed Rulemaking

R12-4-413. Private Game Farm License

- A. ~~A private game farm license allows any or all of the following: offer for sale, sale, trade, rent or lease, giving away, purchase, display for sale, import, possession, propagation, rearing, transport and export of the live wildlife specified on the license. A private game farm license requires the commercial use of wildlife held under the license. The commercial use of wildlife under this license allows only the following: offer for sale, sale, trade, rent or lease, giving away, purchase, display for sale, import, possession, propagation, rearing, transport and export of wildlife or the carcass of wildlife or its parts, as specified on the license. As defined in R12-4-401, propagation involves only wildlife and does not permit possession of domestic animals or other non-wildlife species for propagation. Private game farm wildlife may be killed or slaughtered, but a person an individual shall not kill or allow the wildlife to be killed by hunting or in a manner that could be perceived as hunting or recreational sport harvest. Private game farm wildlife shall not be killed by a person an individual who pays a fee to the owner of the game farm for killing the wildlife, nor shall the game farm owner accept a fee for killing the wildlife, except as allowed under R12-4-414, R12-4-415, R12-4-416, and R12-4-419.~~
- B. The following criteria are prerequisites for approval of a private game farm license:
1. ~~Escape of the proposed species will not create a threat to indigenous wildlife.~~
 2. ~~An applicant shall provide, with the application required by subsection (C), a detailed diagram of the facilities where wildlife is to be held and a detailed description of the procedures to be employed by the applicant in meeting the requirements of R12-4-428.~~
 3. The Department may issue a license for only the following pen-reared game birds:
 - a. ~~*Alectoris chukar*, chukar;~~
 - b. ~~*Callipepla californica*, California or valley quail;~~
 - c. ~~*Callipepla gambelii*, Gambel's quail;~~
 - d. ~~*Callipepla squamata*, scaled quail;~~
 - e. ~~*Colinus virginianus*, northern bobwhite. License is required only Units 34A, 36A, 36B, and 36C, as prescribed in R12-4-108;~~
 - f. ~~*Cyrtonyx montezumae*, Montezuma or Mearns's quail;~~
 - g. ~~*Dendragapus obscurus*, blue grouse; and~~
 - h. ~~*Phasianus colchicus*, ringneck and whitewing pheasant.~~
 4. ~~The Department may issue a license for fox or mink if a prior inspection of the holding facilities or the plans for those facilities by the Department proves escape is unlikely.~~
 5. ~~With the exception of live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, the Department may issue a license for other mammals listed as restricted live wildlife only if:~~
 - a. ~~The same species does not exist in the wild in Arizona;~~
 - b. ~~The wildlife is disposed of only by export from Arizona, to game farms licensed under this rule, to zoos licensed under R12-4-420, or to medical or scientific research facilities with an exemption under R12-4-407;~~
 - c. ~~The application required in subsection (C) is accompanied by proof of current licensing by the United States Department of Agriculture under 9 CFR Subchapter A., Animal Welfare; and~~
 - d. ~~The application required in subsection (C) is accompanied by a typed proposal explaining the species to be possessed, the purpose of possession, the purpose of propagation if applicable, the planned disposition of wildlife including progeny, and how the licensee will prevent escape, threat to native wildlife, and threat to public safety.~~
 6. ~~The Department may issue a license for any other restricted live wildlife not addressed in subsections (B)(3), (B)(4), or (B)(5), only if the wildlife was held under a private game farm license issued before April 28, 1989.~~
 7. ~~An applicant shall submit a separate application for each location.~~
- C. An applicant shall use an application form available from any Department office. The applicant shall provide the following information on the form:
1. ~~Name, address, and telephone number of the applicant;~~
 2. ~~Location of game farm, including street address or legal description;~~
 3. ~~Species and number of live wildlife to be obtained or, if application is for renewal, species and number of live wildlife that are currently in captivity; and~~
 4. ~~Signature of applicant.~~
 1. ~~Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;~~
 2. ~~Name, address, and telephone number of the applicant's business;~~
 3. ~~The wildlife species and the number of animals per species that will be used under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species. Except for live cervids, which shall not be imported, transported, or possessed, except as authorized by R12-4-430, the Department shall only issue a license for the following species:~~
 - a. ~~Pen reared game birds:~~
 - i. ~~Blue grouse, *Dendragapus obscurus*;~~
 - ii. ~~Chukar, *Alectoris chukar*;~~
 - iii. ~~California or valley quail, *Callipepla californica*;~~

Notices of Proposed Rulemaking

- iv. Gambel's quail, *Callipepla gambelii*;
- v. Scaled quail, *Callipepla squamata*;
- vi. Montezuma or Mearns' quail, *Cyrtonyx montezumae*;
- vii. Northern bobwhite, *Colinus virginianus*. License is required only for game farms located in game management units 34A, 36A, 36B, and 36C, as prescribed in R12-4-108; and
- viii. Ringneck and whitewing pheasant, *Phasianus colchicus*;
- b. Mammals that are restricted live wildlife listed in R12-4-406 only if:
 - i. The same species does not exist in the wild in this state;
 - ii. The applicant submits with the application proof that they have a license issued by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare;
 - iii. The applicant submits with the application a typewritten, computer or word processor printed, or legibly handwritten proposal that clearly states the species to be possessed, the purpose of possession, the purpose of propagation if applicable, and how the applicant will prevent escape, a threat to native wildlife, and a threat to public safety; and
 - iv. The applicant clearly states how they will dispose of the wildlife, either by export from the state, to another game farm licensed under this Section, to a zoo licensed under R12-4-420, to a medical or scientific research facility exempted under R12-4-407, or as otherwise authorized by this Section;
- 4. If the applicant is renewing the private game farm license, the species and number of animals per species that are currently in captivity;
- 5. The name, address, and telephone number of the location of the game farm where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical location of the game farm, including township, range, and section. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
- 6. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
- 7. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife;
- 8. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- C. The Department shall issue a private game farm license in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D).
- D. A licensee private game farm license holder shall ensure that each shipment of live wildlife imported into the state is accompanied by a certificate of health issued by a licensed veterinarian.
- E. A licensee shall maintain records for three years that include the number, species, source, and date of wildlife obtained or raised and the number, species, and date of disposition and manner of disposition of all wildlife, including the names of persons to whom wildlife is sold, bartered or given.
- ~~F.E.~~ A licensee private game farm license holder shall provide a receipt to each person transporting individual that transports dead wildlife from the site of the game farm. The receipt shall include the date of purchase, barter, or gift that the wildlife was purchased, traded, or given as a gift; the name of the game farm; and the number of dead wildlife, by species, of transported wildlife that are being transported.
- ~~G.F.~~ A licensee private game farm license holder shall ensure that shipments of wildlife made by the game farm are accompanied by documentation showing the name of the game farm license holder, the license number of the valid game farm license for the current year, the date shipped, the species and the number of individuals per species of wildlife in the shipment, the name of the person individual or common carrier transporting the shipment, and the name of the person who will receive the shipment.
- G. Before January 31 of each year, a private game farm license holder shall file a written report on activities performed under the license for the previous calendar year. A private game farm license holder shall submit an annual report on a form available from the Department as prescribed by R12-4-409(O). The annual report shall also include the following information:
 - 1. The number of animals per wildlife species, and the source of all wildlife that the license holder obtained or propagated;
 - 2. The date when the wildlife was obtained or propagated;
 - 3. The date when the wildlife was disposed of and the manner of disposition; and
 - 4. If the wildlife was disposed of by sale, barter, or given as a gift, the names of individuals who received the wildlife.
- H. A private game farm license holder shall maintain records of all wildlife possessed under the license for three years. The records shall include the information required in subsection (H)(1) through (4) and R12-4-409(O)(1) through (5).
- ~~H I.~~ A game farm licensee license holder is subject to the provisions of R12-4-409, R12-4-428, and R12-4-430.

Notices of Proposed Rulemaking

R12-4-414. Game Bird Shooting Preserve License

- A. A game bird shooting preserve license allows the year-round release of pen-reared game birds as ~~specified on~~ prescribed by the license, at the site specified on the license, for the purpose of hunting or shooting by ~~persons~~ individuals who may be charged a fee. It also allows an individual to perform any or all of the following: import, purchase, ~~possession~~ possess, transport, trade, display for sale, offer for sale, sale, gift, ~~propagation~~ propagate, and export of the live wildlife specified on the license.
- B. The following criteria are requisite to approval of a shooting preserve license:
1. ~~A possible escape of the proposed species would not create an unacceptable danger to indigenous wildlife.~~
 2. ~~The operation of the facility shall not pose a threat to public safety or to indigenous wildlife.~~
 3. ~~The Department may issue a license for only the following game birds:~~
 - a. ~~*Alectoris chukar*, chukar.~~
 - b. ~~*Anas platyrhynchos*, mallard duck.~~
 - c. ~~*Colinus virginianus*, northern bobwhite.~~
 - d. ~~*Phasianus colchicus*, ringneck and whitewing pheasant.~~
 4. ~~The Department may issue a license for any other live wildlife only when the wildlife was held pursuant to a shooting preserve license prior to the effective date of this rule.~~
 5. ~~The shooting preserve shall be located on private land and shall not exceed 1000 acres.~~
- C. Application for a shooting preserve license shall be made on a form provided by the Department, and shall be accompanied by a detailed diagram of the facilities where the wildlife is to be held establishing how the licensee shall prevent escape, threat to native wildlife and threat to public safety, and a detailed description of the procedures to be employed by the applicant in meeting the requirements of R12-4-428. The Department shall issue the license or deny the application within 30 calendar days of receiving the application. Application will require the following to be provided by the applicant:
1. Name, address, and telephone number;
 2. Legal description of shooting preserve location;
 3. Species and number of individuals of each species of live wildlife to be obtained or, if application is for renewal, which are currently in captivity;
 4. Signature of applicant.
 1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
 2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business;
 3. The wildlife species and the number of animals per species that will be used under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species. The Department shall only issue a license for the following game bird species:
 - a. Chukar, *Alectoris chukar*;
 - b. Mallard duck, *Anas platyrhynchos*;
 - c. Northern bobwhite, *Colinus virginianus*, except that no license will be issued for this species in game management units 34A, 36A, 36B, and 36C, as prescribed in R12-4-108; and
 - d. Ringneck and whitewing pheasant, *Phasianus colchicus*;
 4. If the applicant is renewing the game bird shooting preserve license, the species and number of animals per species that are currently in captivity;
 5. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical description of the location, including township, range, and section;
 6. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
 7. A detailed description or diagram of the shooting preserve where the applicant will release the wildlife. The shooting preserve shall not be more than 1000 acres and shall be located on private land;
 8. The name, address, and telephone number of the shooting preserve where the wildlife will be released, if applicable. Otherwise, the physical location of the shooting preserve, including township, range, and section. If the applicant applies to release wildlife at more than one shooting preserve, the applicant shall submit a separate application for each preserve;
 9. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife;
 10. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- C. The Department shall issue a game bird shooting preserve license in compliance with R12-4-106. The Department shall not issue a game bird shooting preserve license if escape of any species listed on the application or operation of a game bird shooting preserve will create a threat to native wildlife or public health or safety. If the Department denies the appli-

Notices of Proposed Rulemaking

cation for a special license, the Department shall proceed as prescribed by R12-4-409(D).

- D. ~~Each~~ A game bird shooting preserve license holder shall ensure that each shipment of live wildlife imported into the state ~~shall be~~ is accompanied by a certificate of health issued by a licensed veterinarian.
- E. ~~The~~ A game bird shooting preserve license holder shall post visible and legible signs every 100 yards that mark the boundaries of the shooting preserve ~~shall be plainly posted every 100 yards with legible signs~~. Each sign shall indicate that the area behind the sign is a private game bird shooting preserve and display the name of the shooting preserve.
- F. ~~A receipt shall be provided to each person transporting~~ A game bird shooting preserve license holder shall provide a receipt to each individual that transports dead wildlife from the site of the game bird shooting preserve. The receipt shall include the date of purchase and the name of the shooting preserve, and the number by species of wildlife to be transported.
- G. ~~Shipments~~ A game bird shooting preserve license holder shall ensure that shipments of dead wildlife made by the game bird shooting preserve ~~shall be~~ are accompanied by documentation showing the name of the shooting preserve license holder, the license number of the valid game bird shooting preserve license for the current year, ~~the date the wildlife is shipped,~~ the number ~~and of animals per species of wildlife in the shipment,~~ and the name of the ~~person individual~~ or common carrier transporting the shipment and the name of the ~~person individual~~ who will receive the shipment.
- H. ~~No~~ A hunting license is not required to hunt released wildlife on a licensed game bird shooting preserve, ~~and the season may be yearlong~~. The season for taking game birds on a shooting preserve may be yearlong. Wildlife released on a shooting preserve and found outside the preserve shall not be taken under provisions of a game bird shooting preserve license.
- I. ~~Wildlife~~ Game birds released on a shooting preserve may be taken by any method not prohibited ~~in~~ by R12-4-303.
- J. Licensee shall keep records for three years which shall include the number, source and date of wildlife obtained or reared ~~and the number, species and date of disposition and manner of disposition of all wildlife, including the names of persons to whom the wildlife was sold, bartered or given~~. Before January 31 of each year, a game bird shooting preserve license holder shall file a written report on activities performed under the license for the previous calendar year. A game bird shooting preserve license holder shall submit an annual report on a form available from the Department as prescribed by R12-4-409(O). The annual report shall also include the following information:
 - 1. The number of animals per wildlife species, and the source of all wildlife that the license holder obtained or propagated;
 - 2. The date when the wildlife was obtained or propagated;
 - 3. The date when the wildlife was disposed of, and the manner of disposition; and
 - 4. If the wildlife was disposed of by sale, barter, or given as a gift, the names of individuals who received the wildlife.
- K. A game bird shooting preserve license holder shall maintain records of all wildlife possessed under the license for three years. The records shall include all information required in an annual report as stated in subsection (J)(1) through (4) and R12-4-409(O).
- ~~K~~ L. ~~Shooting~~ Game bird shooting preserve licenses are subject to the ~~provision~~ provisions of R12-4-409 and R12-4-428.

R12-4-415. Game Bird Field Trial License

- A. A game bird field trial license allows ~~an individual to the~~ release and take of released live pen-reared game birds specified on the license for the purpose of conducting a competition to test the performance of hunting dogs in one field trial event. It also allows the import or purchase within ~~Arizona~~ the state, possession, and transport of the game birds specified on the license for one field trial event. ~~Birds~~ Game birds may be possessed alive by the ~~licensee~~ license holder after the field trial event until December 31 of the year the license was issued. ~~Birds~~ Game birds possessed alive subsequent to the field trial event may be transported and may be given away, exported or killed.
- B. ~~The following criteria are requisite to approval of any field trial license application:~~
 - 1. ~~The field trial event shall not exceed 10 consecutive days.~~
 - 2. ~~Release shall not be approved for any site where there is an established wild population of the same species of upland game birds or where release of birds may interfere with wildlife or habitat restoration programs, or during nesting periods if there are nesting upland game birds or waterfowl in the area.~~
 - 3. ~~The Department may issue a license for only the following game birds:~~
 - a. ~~*Alectoris chukar*, chukar;~~
 - b. ~~*Anas platyrhynchos*, mallard duck;~~
 - c. ~~*Colinus virginianus*, northern bobwhite;~~
 - d. ~~*Phasianus colchicus*, ringneck and whitewing pheasant.~~
- C. ~~Application shall be made~~ An individual shall apply for a game bird field trial license on a form provided by the Department. The form shall be accompanied by a detailed description of the procedures to be employed by the applicant in meeting the requirements of R12-4-428. The Department shall issue the license or deny the application within 30 calendar days of receiving the application. The form requires that the following be provided by the applicant An applicant shall submit the following on the application:
 - 1. Name, phone number and address of the applicant;
 - 2. Number and species of live birds to be used in the event;

Notices of Proposed Rulemaking

3. ~~Legal description for location of event;~~
4. ~~Beginning dates of the event;~~
5. ~~Signature of applicant.~~
1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business. If the applicant will use the wildlife for an activity sponsored by an organization, the name of the organization, and the name, address, and telephone number of the organization chair or local chapter;
3. The wildlife species and the number of animals per species that will be used under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species. The Department shall only issue a license for the following game bird species:
 - a. Chukar, *Alectoris chukar*;
 - b. Mallard duck, *Anas platyrhynchos*;
 - c. Northern bobwhite, *Colinus virginianus*, except that no license shall be issued for this species in game management units 34A, 36A, 36B, and 36C, as prescribed in R12-4-108; and
 - d. Ringneck and whitewing pheasant, *Phasianus colchicus*;
4. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical description of the location, including township, range, and section;
5. A description of how the license holder will comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
6. The beginning date of the event. A game bird field trial event shall not last longer than 10 consecutive days;
7. The name, address, and telephone number of the location where the wildlife will be released, if applicable. Otherwise, the physical description of the location, including township, range, and section. If the applicant is applying to release wildlife at multiple locations, the applicant shall provide the name, address, and telephone number of each location or the physical description of the location, including township, range, and section;
8. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife;
9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- C. The Department shall issue a game bird field trial license in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall not issue a game bird field trial license if:
 1. Escape of any species listed on the application or operation of a game bird shooting preserve will create a threat to native wildlife or public health or safety;
 2. There is already an established wild population of upland game birds at the site where the field trial event is planned to take place, and the wild population is the same species as the wildlife listed on the license;
 3. The release of game birds interferes with wildlife or habitat restoration programs, or
 4. The release of game birds takes place during nesting periods of upland game birds or waterfowl that nest in the area.
- D. Each shipment of game birds imported shall be accompanied by a certificate of health from a licensed veterinarian for the shipment.
- E. The field trial event shall be held only on the dates and in A game bird field trial license holder shall only hold a field trial event at the location specified on the license, and shall only release or take the species of game birds specified on the permit shall be released or taken.
- F. Any released game birds not taken or recovered during the dates specified on the permit license become property of the state, and therefore shall not be taken under a game bird field trial license.
- G. No A hunting license shall not be required for participants to participate in a field trial event held pursuant to under the provisions of this rule Section. The licensee license holder or a representative for the licensee license holder shall have the field trial license in possession during the event at the site of the event specified on the license. Released wildlife may be taken by any method not prohibited in R12-4-303.
- H. Wildlife being transported from a field trial event shall have a tag or label affixed to each container of live birds, carcass or package listing the following:
 1. The name of the licensee license holder,
 2. The date of shipment or transport,
 3. The number and of animals per species of wildlife,
 4. The name of the person individual or common carrier transporting them and the name and address of the person individual who will receive the shipment.
- I. Licensee A game bird field trial license holder shall submit a report to the Department within 30 calendar days following the event, of that specifies the species and number of birds per species released and retaken. A list of names and addresses of participants shall be available for inspection by the Department.

Notices of Proposed Rulemaking

J. ~~Field trial licenses are~~ A field trial license holder is subject to the provisions of R12-4-409 and R12-4-428.

R12-4-416. Game Bird Field ~~Trial~~ Training Permit

- A. ~~A game bird field trial training permit allows the an individual to release and take of released live pen-reared game birds specified on the permit, by one individual for the purpose of dog or raptor training a dog or raptor to hunt. Birds Game birds may be purchased within Arizona the state, or imported when the shipment is accompanied by a certificate of health issued by a licensed veterinarian. Birds Game birds possessed pursuant to this rule under this Section may be transported, and may be given away, exported or killed.~~
- B. ~~The following criteria are requisite to approval of any field trial training permit:~~
1. ~~Release shall not be approved for any site where there is an established wild population of the same species of birds or where release of birds may interfere with wildlife or habitat restoration programs, or during nesting periods if there are nesting upland game birds or waterfowl in the area.~~
 2. ~~The Department may issue a license for only the following game birds:~~
 - a. ~~*Alectoris chukar*, chukar;~~
 - b. ~~*Anas platyrhynchos*, mallard duck;~~
 - c. ~~*Colinus virginianus*, northern bobwhite;~~
 - d. ~~*Phasianus colchicus*, ringneck and whitewing pheasant.~~
- C. ~~Application shall be made on a form provided by the Department. The form shall be accompanied by a detailed description of the procedures to be employed by the applicant in meeting the requirements of R12-4-428. The Department shall issue the permit or deny the application within 30 calendar days of receiving the application. The form requires that the following be provided by the applicant:~~
1. ~~Name, address and phone number;~~
 2. ~~Proposed geographic location of sites where release is to occur;~~
 3. ~~Proposed dates during which training would occur at each site;~~
 4. ~~Signature of applicant.~~
 1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
 2. The wildlife species and the number of animals per species that will be used under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species. The Department shall only issue a license for the following game bird species:
 - a. Chukar, *Alectoris chukar*;
 - b. Mallard duck, *Anas platyrhynchos*;
 - c. Northern bobwhite, *Colinus virginianus*, except that no license shall be issued for this species in game management units 34A, 36A, 36B, and 36C, as prescribed in R12-4-108; and
 - d. Ringneck and whitewing pheasant, *Phasianus colchicus*.
 3. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical description of the location, including township, range, and section;
 4. A description of how the applicant will comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
 5. The name, address, and telephone number of the location where the wildlife will be released, if applicable. Otherwise, the physical description of the location, including township, range, and section. If the applicant applies to release wildlife at more than one location, the applicant shall submit a separate application for each location;
 6. A range of dates within which training may take place;
 7. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife;
 8. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- D. ~~The Department shall issue a game bird field training permit in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall not issue a game bird field license if:~~
1. ~~There is already an established wild population of upland game birds at the site where the field training event is planned to take place, and the wild population is the same species as the wildlife listed on the license;~~
 2. ~~The release of game birds interferes with wildlife or habitat restoration programs, or~~
 3. ~~The release of game birds takes place during nesting periods of upland game birds or waterfowl that nest in the area.~~
- D. An applicant may request in writing that one or more named individuals be authorized to act as an agent on the applicant's behalf. An individual that has had their wildlife privileges revoked in this state, any other state, or by the United States is not eligible to be agent. An agent is subject to the stipulations on the applicant's permit. The permit holder is responsible for acts of the agents if they fall within the guidelines of this Section.
- E. A game bird field training permit holder may make a written request to amend the permit to add or delete an agent at any

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

time during the license period. The permit holder shall obtain written authorization from the Department before designating any additional agents.

- F.** A game bird field training permit holder shall notify the Department in writing within 10 calendar days of terminating an agent.
- G.** A game bird field training permit holder shall have the permit in possession and a permit holder's authorized agent shall have a copy of the permit in possession while conducting the activities authorized by the permit. The permit and any copies of a permit shall be available for inspection when conducting permitted activities.
- H.** Release shall occur only within locations and dates approved and specified on the permit, and only the species of birds specified on the permit shall be released or taken. A permit holder shall release authorized wildlife only at the location specified on the permit. Any released game birds not taken or recovered after the field training activity become property of the state and shall not be taken under a game bird field training permit.
- E.** The permit shall be in the possession of the permittee during dog training and transport of wildlife.
- F I.** No hunting license shall be required for take of birds released pursuant to the provisions of this rule by the permittee. Pursuit of nonreleased wildlife requires a hunting license. A hunting license is not required to take game birds released under the provisions of this Section.
- G J.** The A field ~~trial~~ training permit holder is subject to the provisions of R12-4-409 and R12-4-428.

R12-4-417. Wildlife Holding License

- A.** With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, the Department shall issue wildlife holding licenses to qualified individuals for the purposes provided in this Section. The wildlife holding license authorizes the person holding the license to engage in specific activities with the specific live wildlife listed on the license. The activities shall be listed on the license to be authorized and may include but not be limited to any of the following: possession, transportation, importation, educational display, exhibit, purchase, propagation, export, give away, or kill. The Department's evaluation of the applicant's proposal and qualifications, and the purpose of the license will determine if the Department will issue or deny the permit and the activities the license authorizes. A wildlife holding license authorizes an individual to: possess, transport, import, display for educational purposes, photograph for commercial purposes, purchase, propagate, export, give away, or euthanize either restricted live wildlife or live wildlife lawfully held under a hunting or fishing license for purposes listed in subsection (B). An individual shall perform only those authorized activities that are specifically stated on the license with the specific live wildlife listed on the license. The Department shall not issue a wildlife holding license to an individual for the use of live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430.
- B.** The Department shall not issue a license to any applicant whose privilege to take or possess wildlife is under current suspension or revocation by the government of any state or the United States.
- C.** The Department shall issue a wildlife holding license only for the primary purposes following, when the purpose if the Department determines issuing the license is in the best interest of the wildlife or the species, it will not adversely impact other wildlife in Arizona of this state, and may be served without posing it does not pose a threat to wildlife or public health or safety; and only for the following purposes:

 - 1. Wildlife management: gathering information valuable to maintenance of wild populations;
 - 2. Education;
 - 3. The advancement of science, or promotion of the public health or welfare;
 - 4. When humane treatment by a person is necessary to safeguard and protect the interests of an animal unable to meet its own needs in the wild, when it has been abandoned, or permanently disabled, or is no longer useful for any previously existing licensed purpose.

1. The advancement of science, wildlife management, or promotion of public health or welfare;

2. Education;

3. To photograph live wildlife for a commercial purpose that is already possessed under the authority of R12-4-404, or already possessed under this Section, but only if:

 - a. The wildlife will be photographed without posing a threat to other wildlife or the public.
 - b. Will not adversely impact other affected wildlife in this state, and
 - c. The applicant meets the criteria prescribed in subsection (C); or

4. To lawfully possess restricted live wildlife if:

 - a. It is necessary for an individual to give humane treatment to restricted live wildlife that has been abandoned or permanently disabled, and is therefore unable to meet its own needs in the wild; or
 - b. It is requested to lawfully possess restricted live wildlife that was possessed under another special license, and the primary purpose for that special license no longer exists.
- D.** The Department shall issue a wildlife holding license for the sole purpose of exhibiting live wildlife already possessed under the authority of R12-4-404 or already possessed under R12-4-417, when the wildlife may be exhibited without posing a threat to wildlife or the public and will not adversely impact other affected wildlife in Arizona.
- E C.** Applicants for a wildlife holding license shall obtain from and submit to the Department a form providing the following

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

information:

1. The applicant's name, mailing address, and telephone number.
2. If applicable, the name, address, and telephone number of the educational, scientific, or other institutional affiliation of the applicant.
3. The species, or higher taxa, if appropriate, of wildlife proposed for an allowable activity.
4. The applicant's signature.

An applicant for a wildlife holding license shall apply on a form provided by the Department and available from any Department office. The applicant shall provide the following information:

1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business. If the applicant will use wildlife for activities authorized by an educational or scientific institution that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the name, address, and telephone number of the institution;
3. The wildlife species and the number of animals per species that will be used under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species;
4. An applicant for a wildlife holding license shall include a typewritten, computer or word processor printed, or legibly handwritten proposal that describes the activity that the applicant intends to perform under the license, and clearly states the contribution the proposed activity will make to one or more of the primary purposes listed in subsection (B). If the applicant is applying to possess restricted live wildlife to give humane treatment, the applicant shall also explain in the written statement why the wildlife is unable to meet its own needs in the wild. If the Department determines that humane treatment is necessary as grounds for issuance of a wildlife holding license, the Department has the authority to authorize the appropriate disposition of the wildlife for humane treatment, including care, placement, and euthanasia;
5. If the applicant is renewing the wildlife holding license, the species and number of animals per species that are currently in captivity, and evidence of lawful possession as defined in R12-4-401;
6. A statement of the applicant's experience in handling and providing care for the wildlife to be held or of their experience that may be relevant to handling or providing care for wildlife;
7. The name, address, and telephone number of the facility where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical location of the facility, including township, range, and section. If the applicant applies to hold wildlife in more than one facility, the applicant shall submit a separate application for each facility;
8. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
9. The dates that the applicant will begin and end holding wildlife;
10. A clear description of how the applicant intends to dispose of the wildlife once the proposed activity in (C)(4) ends; and
11. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.

D. The Department shall issue a wildlife holding license in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D).

F.E. Applicants for a wildlife holding license shall also submit the following with their application form:

1. If the wildlife is currently in possession, submit evidence of lawful possession as defined in R12-4-401. If the wildlife is not yet in possession, submit proof of application for evidence of lawful possession. If the application is for exhibit of wildlife possessed under the authority of R12-4-404, provide an affidavit that the wildlife was lawfully taken under authority of a hunting or fishing license in accordance with Commission order or is the progeny of wildlife lawfully taken.
2. The street address or legal description of the location where the wildlife is to be held and a detailed diagram of the facilities where the wildlife is to be held.
3. A detailed description of the procedures that will be used to meet the requirements of R12-4-428.
4. A statement of the applicant's experience in handling and providing care for the wildlife to be held or of other experience that may be relevant to handling or providing care for wildlife.
5. The dates proposed to begin and end holding the wildlife.
6. A statement of the planned disposition and method of disposition of the wildlife at the conclusion of the proposed activities.
7. If the purpose of the license is for wildlife management, education, the advancement of science, or the promotion of the public health or welfare, submit a detailed description of the proposed management, educational, or scientific activity.
8. If the purpose of the license is for humane treatment, submit a written statement explaining why the wildlife is unable to meet its own needs in the wild, whether it has been abandoned, or permanently disabled, or is no longer useful for

Notices of Proposed Rulemaking

any previously existing licensed purpose. The statement shall also specify where the wildlife is currently possessed and who possesses it.

9. ~~If the purpose of the license is to exhibit live wildlife already possessed under the authority of R124404 or already possessed under R12-4-417, submit a detailed description of the proposed exhibit activity.~~

~~G. The Department may have the authority to require that a wildlife holding license holder permanently mark any restricted live wildlife that is used for lawful activities under the authority of the wildlife holding license be permanently marked for identification purposes, when if the Department determines this is necessary for it is in the best interest of the public and the wildlife. If this is a requirement, it the Department exercises this authority, the marking requirement will be specified on the license.~~

~~F. A wildlife license holder shall ensure that restricted live wildlife, parts thereof, or their offspring obtained or held under the authority of the license are not sold, offered for sale traded, bartered, loaned for the purposes of commercial activities, given as a gift, or disposed of in any way except as stipulated or directed in writing by the Department.~~

~~G. A wildlife holding license is no longer valid once the primary purpose of the permit, as prescribed in subsection (B), no longer exists, and the wildlife license holder shall submit a report to the Department as prescribed in subsection (K).~~

~~H. The licensee A wildlife holding license holder shall ensure that a copy of the license accompanies any shipment of wildlife made under the authority of the license.~~

~~I. The Department may conduct reasonable inspections of the facilities as described in R12-4-409(G) where wildlife is held under a wildlife holding license.~~

~~I.J. The licensee shall annually obtain from and submit to the Department a report form providing the following information within 30 days after the license expires Before January 31 of each year, a wildlife holding license holder shall file a written report on activities performed under the license for the previous calendar year. A wildlife holding license holder shall submit an annual report on a form available from the Department as prescribed by R12-4-409(O). The annual report shall also include the following information:~~

- ~~1. The licensee's name, address, and phone number; A list of each animal by species held during the year, including the source and date the wildlife was acquired;~~
- ~~2. A listing of each animal held during the year, by species, including the source and date of acquisition and the place and date of disposition for each animal. If applicable, the permanent mark or identifier of the wildlife, such as name, number, or another identifier as prescribed in subsection (F) for each animal held during the year. This designation or identifier shall be provided with other relevant reported details for the holding or disposition of the individual animal;~~
- ~~3. Whether or not the wildlife is alive or dead;~~
- ~~4. The current location of the wildlife; and~~
- ~~5. A list of all educational displays where the wildlife held under this license was utilized during the year, including the date, location, organization or audience, approximate attendance and wildlife used.~~

~~J. The licensee shall comply with R12-4-409, R12-4-428, and R12-4-430.~~

~~K. Wildlife holding licenses expire on A wildlife holding license expires December 31 of the year of issuance that it was issued, or, if the licensee license holder is a representative of an institution, organization, or agency stated in (C)(2), upon termination of affiliation with that entity, whichever comes first.~~

~~L. A wildlife license holder shall comply with R12-4-409, R12-4-428, and R12-4-430.~~

R12-4-418. Scientific Collecting Permit

~~A. A scientific collecting permit allows the following, subject to Department evaluation of and stipulations to the application submitted in compliance with subsection (C):~~

- ~~1. A permittee may take wildlife specified on the permit in the localities and time periods specified on the permit by any method prescribed in R12-4-304 or R12-4-313. If specifically authorized on the permit, the permittee may take the wildlife by the use of stupefying or deleterious substance, electroshock, pitfall, leghold trap, snare, or net, and at night by firearm, providing the least onerous, practical method is employed. The Department may rescind or modify any method of take authorized on the permit to protect the interests of wildlife or public safety. The permit may restrict the number of animals per species or other taxa that may be taken, as well as the age or condition of the wildlife that may be taken.~~
- ~~2. A permittee may possess, transport, propagate, or educationally display live wildlife specified on the permit. A person shall not exhibit wildlife held under a scientific collecting permit.~~
- ~~3. A permittee shall dispose of live wildlife specified on the permit by releasing the wildlife when not removed from the area where captured, by releasing the wildlife in a location previously approved by the Department, or as authorized by the Department.~~
- ~~4. A permittee shall only release live wildlife specified on the permit when the wildlife is not removed from the area where captured, or when the wildlife is released in a location previously approved by the Department.~~

~~B. The Department shall issue a scientific collecting permit only if:~~

- ~~1. The applicant's privilege to take or possess wildlife is not under current suspension or revocation by the government of any state or the United States;~~

Notices of Proposed Rulemaking

2. The permit is for the purpose of wildlife management; gathering information valuable to maintenance of wild populations; education; the advancement of science; or promotion of the public health or welfare;
 3. The permit is for a purpose that is in the best interest of the wildlife or the species, will not adversely impact other affected wildlife in Arizona, and may be served without posing a threat to wildlife or public safety;
 4. The permit is for a purpose that does not unnecessarily duplicate previously documented projects; and
 5. The Department has verified the purpose based on a written project proposal submitted as part of the application form required in subsection (C).
 6. The Department may require submission of interim reports in addition to those required by subsection (G), and may make the submission of these additional interim reports a criterion for permit issuance.
- C.** An applicant shall provide the following information on an application form supplied by the Department:
1. Name, home address, home telephone number, and physical description of applicant;
 2. If applicable, the name, address, and telephone number of the scientific or educational institution affiliation or governmental employer;
 3. A complete list by species, or higher taxa, if applicable, of all wildlife for which collecting authorization is sought and the number of individuals per taxon;
 4. The locality or localities for which collecting activities are proposed;
 5. Whether the applicant proposes to:
 - a. Salvage specimens found dead;
 - b. Collect specimens alive and keep them;
 - c. Collect specimens by killing;
 - d. Collect specimens alive and release at the site where taken without transporting from that site after photographing, banding, or marking them with rings, bands, collars, brands, or other markings.
 6. The method or methods of take to be used, including justification for selection of the methods proposed; and
 7. Planned disposition of wildlife collected and progeny of wildlife collected.
- D.** An applicant shall submit with the application form, a detailed project proposal, not to exceed three pages, explaining the purpose, methods, completion schedule, and publication intent of the project; stating the qualifications of the applicant relative to the proposal; and describing in detail the procedures the applicant will use to meet the requirements of R12-4-428.
- E.** The applicant shall submit the application to the Department's Phoenix office.
- F.** The Department issues each scientific collecting permit to an individual, but an applicant may request in writing that one or more named individuals be authorized to act as an agent on the applicant's behalf, provided that:
1. An employment or supervisory relationship exists between the permittee and the agent, and the agent's privilege to take or possess wildlife is not under current suspension or revocation by the government of any state or the United States; and
 2. If the permit limits the number of animals that may be collected, the limit applies to the aggregate of all agent collectors.
- G.** A permittee may at any time during the license period make a written request to amend the permit to add or delete agents meeting the criteria in subsection (F). The Department shall approve or deny the request within 30 calendar days of receipt.
- H.** A permittee shall notify the Department in writing within 10 calendar days of terminating any agent.
- I.** Before collecting any wildlife at night with firearms, a permittee shall notify the regional Department office nearest the locality of the planned collection and advise that office of the dates, times, places and methods of collection.
- J.** A permittee shall ensure that a copy of the permit accompanies any shipment of wildlife made under authority of the permit.
- K.** A permittee shall file a written report on a form available from the Department, within 30 days after expiration of the permit. A report is required even if no collecting was done. The permittee shall provide the following information and shall include information from agents acting for the permittee:
1. Name and address of the permittee and any agency affiliation relevant to the permit;
 2. Name and address of all agents;
 3. Scientific collecting permit number and date of issuance;
 4. A list by specimen of all species collected, live or dead, of any species the Department includes on the permit, providing detailed localities of collection, observation, banding, or other handling, dates of take, places of disposition, and other relevant information the Department includes on the permit; and
 5. A list by individual for all species live or dead, collected, banded, possessed, or disposed of that are not listed in accordance with subsection (K)(4).
- L.** A permittee under this Section is subject to R12-4-409 and R12-4-428.
- M.** A scientific collecting permit expires on December 31 of the year of issuance, or, if the permittee is a representative of an institution, organization, or agency, upon the permittee's termination of affiliation with that entity, whichever comes first.
- N.** This rule is effective July 1, 2001.

Notices of Proposed Rulemaking

- A.** A scientific collecting permit allows an individual to take, possess, transport, photograph for noncommercial purposes, and display for educational purposes the live wildlife specified on the permit, subject to the conditions specified in subsection (B). A permit holder shall not exhibit wildlife held under the permit. The Department shall issue a scientific collecting permit only if:
1. The permit is for the purpose of wildlife management; gathering information valuable to the maintenance of wild populations; education; the advancement of science; or promotion of the public health or welfare;
 2. The permit is for a purpose that is in the best interest of the wildlife or the species, will not adversely impact other affected wildlife in this state, and may be authorized without posing a threat to wildlife or public safety;
 3. The permit is for a purpose that does not unnecessarily duplicate previously documented projects; and
 4. The applicant has submitted an acceptable typewritten, computer or word processor printed, or legibly handwritten project proposal as part of the application form required in subsection (C).
- B.** Scientific collecting permits are subject to the following conditions:
1. A scientific collecting permit holder may take wildlife under the permit using the least onerous, practical method possible, and shall:
 - a. Take wildlife at the locations and time periods specified on the permit by any method prescribed by R12-4-304 or R12-4-313;
 - b. Take wildlife by using a stupefying or deleterious substance, electroshock, pitfall trap, leghold trap, snare, or net only if specifically authorized on the permit;
 - c. Take wildlife at night by using a firearm only if authorized by the permit.
 2. If it is in the best interest of the wildlife or public safety, the Department has the authority to:
 - a. Rescind or modify any method of take authorized by the permit;
 - b. Restrict the number of animals per species or other taxa that may be taken under the permit;
 - c. Restrict the age or condition of wildlife that may be taken under the permit;
 - d. Deny or substitute the number of specimens and taxa requested on an application.
 3. A scientific collecting permit holder shall dispose of wildlife as follows:
 - a. If the wildlife was not removed from the area where it was taken, by releasing it;
 - b. If the wildlife was removed from the area where it was taken, by releasing the wildlife in a location previously approved by the Department; or
 - c. As otherwise stipulated or directed in writing by the Department.
 4. Wildlife, their parts, or their offspring obtained or held under the authority of this license may not be sold, offered for sale, traded, bartered, loaned for the purpose of commercial activities, given as a gift, or disposed of in any way except as stipulated or directed in writing by the Department.
- C.** An applicant for a scientific collecting permit shall apply on a form provided by the Department and available from any Department office, and shall return a completed form to the Department's Phoenix Headquarters. The applicant shall provide the following information:
1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
 2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business;
 3. If the applicant will use wildlife for activities authorized by a scientific, educational, or government institution, organization, or agency that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the name, address, and telephone number of the institution and the applicant's title or a description of the nature of affiliation with the institution or organization;
 4. A typewritten, computer or word processor printed, or legibly handwritten proposal, not to exceed three pages, that states:
 - a. The activity that the applicant intends to perform under the license, and clearly states the contribution the proposed activity will make to one or more of the purposes specified in subsection (A)(1) above;
 - b. If the applicant is applying for a permit to make a contribution to education, the applicant shall also state in the proposal the minimum number of presentations that the applicant anticipates to make during the period that the permit is valid; the name, title, address, and telephone number of individuals that the applicant has contacted in order to hold educational presentations, and if applicable, the number of specimens of the species requested that the applicant already possesses;
 - c. The applicant's qualifications for completing the project;
 - d. The methods of take that the applicant will use to complete the project, justification for using that method, and whether the applicant proposes to:
 - i. Salvage specimens found dead;
 - ii. Collect specimens alive and keep them;
 - iii. Collect specimens by killing them; or
 - iv. Collect specimens alive at the site where taken without transporting them from that site after photographing, banding, or marking them with rings, collars, brands or other markings;

Notices of Proposed Rulemaking

- e. The wildlife species and the number of animals per species that will be used under the license. If the application is for use of multiple species or wildlife of a higher taxon, the applicant shall list each species and the number of animals per species;
- f. The location where collection will take place;
- g. How the applicant will dispose of wildlife or offspring of wildlife, if applicable, as prescribed by subsection (B)(3);
- h. The names and addresses of any agents that will assist the applicant in carrying out the activities described in the proposal. An applicant may request that one or more individuals be authorized to act as an agent on the applicant's behalf, provided that:
 - i. An employment or supervisory relationship exists between the applicant and the agent; and
 - ii. The agent's privilege to take or possess live wildlife is not suspended or revoked by any state.
- i. A schedule of activities and the completion date of the project; and
- j. Whether or not the applicant intends to publish the project or its findings;
- 5. If the applicant is renewing the wildlife holding license, the species and number of animals per species that are currently in captivity, and evidence of lawful possession as defined in R12-4-401;
- 6. A statement of the applicant's experience in handling and providing care for the wildlife to be held or of their experience that may be relevant to handling or providing care for wildlife.
- 7. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical location including township, range, and section. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
- 8. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
- 9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- D. The Department shall issue a scientific collecting permit in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D).
- E. By January 31 of each year or as otherwise required by R12-4-409(O), a scientific collecting permit holder shall file a written report on activities performed under the license for the previous calendar year. A scientific collecting permit holder shall submit an annual report on a form of content as prescribed by R12-4-409(O). The Department may stipulate submission of additional interim reports upon license application or renewal.
- F. An agent of a scientific collecting permit holder is subject to stipulations placed on the applicant's permit at the time of application. The permit holder is responsible for acts of the agents that fall within the authority of this Section. The Department, acting on behalf of the Commission, may suspend or revoke a permit for violation of this Section by an agent.
- G. A scientific collecting permit holder and its agents shall have the permit or a legible copy in their possession and available for inspection while conducting activities authorized under the scientific collecting permit.
- H. A scientific collecting permit holder may at any time during the license period make a written request to amend the permit to add or delete agents meeting the criteria in subsection (F).
- I. A scientific collecting permit holder shall notify the Department in writing within 10 calendar days of terminating any agent.

R12-4-419. ~~Wildlife~~ Game Bird Hobby License

- A. A ~~wildlife~~ game bird hobby license allows an individual to perform any or all of the following: import, purchase, possess, propagate, give away, kill, transport and export pen-reared live ~~wildlife~~ game birds for personal, noncommercial use only. The ~~wildlife~~ Game birds may also be displayed for noncommercial purposes, but shall not be displayed or maintained in conjunction with any commercial establishment exhibited.
- B. The following criteria are requisite to approval of a wildlife hobby license:
 - 1. A possible escape of the proposed species would not create a threat to indigenous wildlife.
 - 2. The issuance of a license shall be for a purpose in the best interest of the wildlife or species to be held and shall not adversely impact upon any other affected wildlife in Arizona.
 - 3. The Department may issue a license for only the following pen-reared game birds:
 - a. ~~Alectoris chukar~~, chukar;
 - b. ~~Callipepla californica~~, California or valley quail;
 - c. ~~Callipepla gambelii~~, Gambel's quail;
 - d. ~~Callipepla squamata~~, scaled quail;
 - e. ~~Colinus virginianus~~, northern bobwhite; a license is required only in Units 34A, 36A, 36B, and 36C as prescribed in R12-4-108;
 - f. ~~Cyrtonyx montezumae~~, Montezuma or Mearns's quail;

Notices of Proposed Rulemaking

- g. *Dendragapus obscurus*, blue grouse;
- h. *Phasianus colchicus*, ringneck and whitewing pheasant.

C. Application shall be made on a form available from any Department office. Application to possess more than 25 birds shall be accompanied by a detailed diagram of the facilities where the wildlife is to be held and a detailed description of the procedures to be employed by the applicant to meet with the requirements of R12-4-428. The Department shall issue the license or deny the application within 30 calendar days. Application requires the following to be provided by the applicant:

1. Name, address and telephone number of the applicant;
2. Location where wildlife is to be held, either:
 - a. Street address, or
 - b. Legal description;
3. Species of wildlife to be obtained or, if application is for renewal, species currently in captivity;
4. Signature of applicant.

An applicant for a game bird hobby license shall apply on a form provided by the Department and available at any Department office. The applicant shall provide the following:

1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number.
2. The wildlife species and the number of animals per species that will be obtained under the license. If the application is for use of multiple species, the applicant shall list each species and the number of animals per species. The Department shall only issue a license for the following game bird species:
 - a. Blue grouse, *Dendragapus obscurus*;
 - b. California or valley quail, *Callipepla californica*;
 - c. Chukar, *Alectoris chukar*;
 - d. Gambel's quail, *Callipepla gambelii*;
 - e. Montezuma or Mearns' quail, *Cyrtonyx montezumae*;
 - f. Northern bobwhite, *Colinus virginianus*, which only requires a game bird hobby license if used in game management units 34A, 36A, 36B, and 36C;
 - g. Ringneck and whitewing pheasant, *Phasianus colchicus*;
 - h. Scaled quail, *Callipepla squamata*.
3. If the applicant is renewing the game bird hobby license, the species and number of animals per species that are currently in captivity.
4. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical description of the location, including township, range, and section;
5. If the applicant is applying in order to possess more than 50 game birds, the application shall include a detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section;
6. The name, address, and telephone number of all wildlife suppliers from whom the special license applicant will obtain wildlife;
7. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.

C. The Department shall issue a game bird hobby license in compliance with R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall issue a game bird hobby license only if:

1. A possible escape of the proposed species would not create a threat to native wildlife;
2. The purpose for the license is in the best interest of the wildlife or the species; and
3. The license may be issued without posing a threat to public health or safety.

D. ~~Wildlife~~ Game bird hobby licenses are subject to the provisions of R12-4-409 and R12-4-428.

R12-4-420. Zoo License

A. With the exception of all live cervids, which shall not be imported, transported, or possessed except as allowed under R12-4-430, a zoo license allows an individual to perform all of the following: exhibit, educational display, import, purchase, export, possession, propagation, euthanization, transport, giving give away, offering offer for sale, and sale, or trade of restricted live wildlife and other Arizona state wildlife legally possessed, subject to the following restrictions:

1. A licensee zoo license holder shall hold all wildlife possessed in the facilities specified on the license except when the wildlife is transported to or from a temporary exhibits exhibit. Temporary exhibits A temporary exhibit shall not exceed 20 60 consecutive days at any one location.
2. A licensee zoo license holder shall only dispose of restricted live wildlife within Arizona in this state by selling, giving, or trading it to another zoo licensed under this Section, to an appropriate special license holder such as a game farm licensed under R124413 R12-4-413, to a medical or scientific research facility exempted under R124407 R12-4-

Notices of Proposed Rulemaking

407, by exporting it to a zoo that is certified by the American Zoo and Aquarium Association, or as directed by the Department.

3. A licensee zoo license holder shall not accept any wildlife ~~donations, or purchase or otherwise obtain wildlife that is donated, purchased, or otherwise obtained~~ without accompanying evidence of lawful possession.
4. A licensee may zoo license holder shall dispose of all wildlife obtained under a scientific collecting permit or wildlife that has been loaned to the zoo by the Department only as directed in writing by the Department.
5. A zoo license holder shall hold wildlife in such a manner as to prevent it from escaping the facilities specified on the license, and also to prevent the entry of unauthorized individuals or other wildlife.

B. The following criteria are prerequisites for approval of a zoo license:

1. The Department shall ensure that the operation meets the definition of "zoo" at A.R.S. § 17101(A)(23).
2. An applicant shall submit with the application proof of current licensing by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare.
3. The Department shall ensure that the issuance of a license is for a purpose in the best interest of the wildlife or species to be held, does not adversely impact upon any other wildlife in Arizona, and does not pose a threat to wildlife or public safety.

The Department shall issue a zoo license only for the following purposes:

1. The advancement of science, wildlife management, or promotion of public health or welfare;
2. Education; or
3. Conservation, or maintaining a population of wildlife threatened with extinction in the wild.

C. An applicant shall use a form available from any Department office. The applicant shall provide the following information on the form:

1. Name and location of the zoo;
2. Mailing address and telephone number for the zoo;
3. Signature of owner or person responsible for the zoo; and
4. If the application is not for renewal of a previously granted license, a list, by species, of restricted live wildlife and other legally possessed Arizona wildlife to be held and the number of each species. The list shall include scientific and common names for restricted live wildlife as specified in R12-4-406.

An applicant for a zoo license shall apply on a form provided by the Department and available from any Department office. The applicant shall provide the following information:

1. Name, address, telephone number, birthdate, physical description, and Department ID number (if applicable) of the applicant;
2. If the applicant will use the wildlife for a commercial purpose, the name, address, and telephone number of the applicant's business. If the applicant will use wildlife for activities authorized by an educational or scientific institution that employs, contracts, or is similarly affiliated with the applicant, the applicant shall provide the name, address, and telephone number of the institution;
3. The wildlife species and the number of animals per species that will be held under the license. The list shall include scientific and common names for all wildlife held;
4. An applicant for a zoo license shall include a typewritten, computer or word processor printed, or legibly handwritten proposal that describes the following:
 - a. How the facility or operation meets the definition of a zoo, as stated in R12-4-401; and
 - b. The purpose of the license. Acceptable purposes of a zoo license are listed in subsection (B);
5. If the applicant is renewing the zoo license, the species and number of animals per species that are currently in captivity, and evidence of lawful possession as defined in R12-4-401;
6. Proof of current licensing by the United States Department of Agriculture under 9 CFR Subchapter A, Animal Welfare;
7. The name, address, and telephone number of the zoo where the wildlife will be held. If the applicant applies to hold wildlife in more than one location, the applicant shall submit a separate application for each location;
8. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section. A wildlife holding facility must satisfy a Department inspection before the license application will be approved; and
9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.

D. The Department shall issue a zoo license in compliance with R12-4-106. If the Department denies the application for a zoo license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall issue a license for the purposes stated in subsection (B) if:

1. It is in the best interest of the wildlife, and
2. Issuance of the license will not adversely impact other wildlife in the state.

D E. A zoo license holder shall clearly display an entrance sign that states the days of the week and hours when the facility is

Notices of Proposed Rulemaking

open for viewing by the general public.

- ~~E.~~ A licensee zoo license holder shall maintain a record of each animal obtained under subsection (A)(4) for three years following the date of disposition. The record shall include the species, source of the wildlife, date received, any Department approval authorizing acquisition, and the date and method of disposition.
- ~~G.~~ Before January 31 of each year, a zoo license holder shall file a written report on activities performed under the license for the previous calendar year. A zoo license holder shall submit an annual report to the Department in consistency with R12-4-409(O). The report shall summarize the current species inventory, and acquisition and disposition of all wildlife held under the license.
- ~~E H.~~ A zoo license holder may not add restricted live wildlife as specified in R12-4-406 to the license without making a written request to and receiving approval from the Department.
- ~~L.~~ A licensee under this Section zoo license holder is subject to ~~R124409~~ R12-4-409, R12-4-428, and R12-4-430.

R12-4-421. Wildlife Service License

- ~~A.~~ A wildlife service license allows the live capture, transport, and relocation to the wild of furbearing, predatory, or non-game wildlife that is causing a nuisance or, property damage, or posing a threat to the health or life of any human being, or if the life, health, or well being of the wildlife is threatened by the condition of its immediate environment. A wildlife service license also allows the live capture, transport, and relocation to the wild of small game wildlife if the licensee is operating under a valid small game depredation permit issued under R12-4-113 to the wildlife service licensee or another for whom the licensee is acting as an agent. The Department shall issue a wildlife service license to a qualified individual subject to Department evaluation of and stipulations to the application submitted in compliance with subsection (C). Only the individual named on the license may conduct activities the license authorizes. A wildlife service license is not valid for any wildlife protected by federal law or regulation unless supported by federally issued documentation rendering the activity lawful. Persons employed by and conducting activities under the auspices of any public safety government agency or incorporated business authorized to provide public safety measures are exempt from the licensing requirements of this Section.

Any individual or company that provides, advertises, or offers assistance with nuisance wildlife to the general public with or without a fee is required to obtain a wildlife service license. A wildlife service license allows an individual to capture, remove, transport, and relocate to the wild designated live wildlife if it causes a nuisance, property damage, poses a threat to public health or safety, or if the health or well-being of the wildlife is threatened by its immediate environment. A wildlife service license holder may euthanize designated wildlife, but only as prescribed by the Department. For the purposes of this Section, as defined in A.R.S. § 17-101, the following are designated live wildlife:

1. Furbearing wildlife;
2. Javelina (*Tayassu tajacu*);
3. Nongame wildlife;
4. Predatory wildlife; and
5. Small game wildlife.

- ~~B.~~ The following criteria are prerequisites for approval of a wildlife service license:

- ~~1. The applicant's privilege to take or possess wildlife is not under current suspension or revocation by the government of any state or the United States; and~~
- ~~2. The licensee has provided documentation to prove a minimum of six months of full time employment or voluntary service experience in handling wildlife of the species or groups of species for which the wildlife service license will be valid.~~

An employee of a governmental public safety agency or incorporated business authorized to provide public safety measures is not required to possess a wildlife service license if the employee is acting within the scope of their official duties.

- ~~C.~~ An applicant shall use a form available from any Department office. An applicant shall provide the following information at the time of application:

- ~~1. The applicant name, mailing address, day and night telephone numbers to be provided to the public seeking service, and hours and days of the week when the applicant will be available for service;~~
- ~~2. A list of furbearing, predatory, small game, or nongame wildlife, by species or groups of species, for which authorization is requested;~~
- ~~3. The general geographic area where services are to be performed;~~
- ~~4. The signature of the applicant and the date of application submittal; and~~
- ~~5. A written narrative statement containing an explanation of the applicant's experience in the capture, handling, and removal of wildlife, specifying all species of wildlife for which the applicant has performed the function and referencing the general location and dates that the services were performed, along with the methods of disposition for wildlife captured.~~

An applicant for a wildlife service license shall apply on a form provided by the Department and available from any Department office. The applicant shall provide the following information:

1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

2. If the applicant will perform license activities for a commercial purpose, the name, address, telephone number, and hours and days of the week when the applicant will be available for service of the applicant's business;
 3. The designated wildlife species or groups of species listed in subsection (A) that will be used under the license;
 4. The methods that the wildlife license holder will use to perform authorized activities;
 5. A typewritten, computer or word processor printed, or legibly handwritten description of the following:
 - a. The applicant's experience in the capture, handling, and removal of wildlife;
 - b. Specific species that the applicant has had experience capturing, handling, or removing;
 - c. The general location and dates when these activities were performed;
 - d. The methods used to carry out the activities; and
 - e. The methods used to dispose of the wildlife;
 6. The general geographic area where services will be performed;
 7. Documentation that clearly proves that the applicant has a minimum of six months of full-time employment or volunteer experience handling wildlife of the species or groups of species listed in subsection (3); and
 8. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- D.** The Department shall issue a wildlife service license as prescribed in R12-4-106. If the Department denies the application for a wildlife service license, the Department shall proceed as prescribed by R12-4-409(D).
- E.** A licensee wildlife service license holder shall be in possession of possess a copy of the approved license at all times when the licensed function is being performed performing activities authorized by the license.
- ~~E~~ F.** A licensee shall capture, remove, transport, or relocate to the wild any wildlife taken under this Section in the manner that is least likely to cause injury to the wildlife and least likely to result in negative human interaction. The licensee shall not possess wildlife beyond the period of time necessary to transport and relocate the wildlife to the wild, except as allowed by R12-4-427. Wildlife shall not be displayed or exhibited during any period of possession under this Section.
- A wildlife service license holder shall capture, remove, transport, and relocate designated wildlife as follows:
1. In a manner that is least likely to cause injury to the wildlife;
 2. In a manner that will prevent the wildlife from coming into contact with the general public;
 3. If the license holder intends to capture, remove, transport, relocate, or euthanize javelina, the license holder shall obtain special authorization from the Department by contacting the Department regional office that has jurisdiction over the area where the activities will be conducted; and
 4. If the license holder traps wildlife, the license holder shall comply with A.R.S. § 17-361(B) and (C).
- G.** A wildlife service license holder may euthanize wildlife taken under authority of this license only if authorized to do so under the license. If authorized, the license holder shall euthanize the wildlife by the safest, quickest and most humane method available. Unless otherwise stipulated in the license, a license holder shall dispose of all wildlife that is euthanized or that otherwise dies while held under license by burial or incineration within 30 days of death.
- ~~F~~ H.** A wildlife service license holder shall not possess designated wildlife beyond the period of time necessary to transport and relocate the wildlife to the wild, or to provide euthanization except as allowed by R12-4-427. Wildlife shall not be displayed or exhibited at any time when it is possessed under this license.
- I.** A wildlife service license holder shall release captured designated wildlife as follows:
1. Without immediate threat to the animal or injurious contact with humans;
 2. During an ecologically appropriate time of year;
 3. Into a habitat suitable for sustaining it;
 4. In the same geographic area as the animal was originally captured, except that birds may be released at any location statewide within the normal range of that species in an ecological suitable habitat;
 5. In an area designated by the Department regional office that has jurisdiction over the area where it was captured; or
 6. Injured or orphaned wildlife may be given to an Arizona wildlife rehabilitation license holder.
- J.** A wildlife service licensee license holder shall advise inform the Department in writing within five working days of any change in telephone number, area of service, or business hours or days previously submitted to the Department.
- ~~G~~ K.** A licensee wildlife service license holder may, at any time during the license period, make a written request to amend the license to add or delete authority to transport control and release designated species of wildlife, provided that any addition requested meets the requirements of subsection (A). The Department shall grant or deny the request within 60 calendar days of receipt.
- ~~H~~ L.** A licensee seeking wildlife service license holder that seeks renewal of a wildlife service license without change to the species or species groups they are authorized to handle under an approved license may reference supportive materials submitted previously, rather than submitting copies of the materials with the application for renewal.
- ~~I~~ M.** A licensee shall submit a written report to the Department before January 21 following each license year. The report shall contain Before January 31 of each year, a wildlife service license holder shall file a written report on activities performed under the license for the previous calendar year. A wildlife service license holder shall submit an annual report on a form available from the Department as prescribed by R12-4-409(O). The annual report shall also include:

Notices of Proposed Rulemaking

1. A list of all services performed under the license during the preceding calendar year, including for each service;
2. The date and location of service;
3. The number and species of wildlife removed, and
4. The method of disposition for each animal removed, including the location and date of release.

~~J N.~~ A licensee under this Section wildlife service license holder is subject to R12-4-409 and R12-4-428.

~~K.~~ This rule is effective July 1, 2001.

R12-4-423. Wildlife Rehabilitation License

A. For the purposes of this Section, the following definitions apply:

1. "Agent" means ~~a person designated on a license who assists a licensee in performing rehabilitative functions, including transport or release of wildlife, provided there is an employment or direct supervisory relationship between the licensee and the person~~ means the same as "sublicense" or "subpermittee" as it is used in federal laws that this Section references.
2. "Assistant" means ~~a person~~ an individual that is not designated as an agent, as defined in R12-4-401 and this Section, who assists a ~~licensee~~ wildlife rehabilitation license holder and is under the direct supervision of the license holder at the premises described on the license.
3. "License" means ~~a form issued by the Department, and an application form submitted by an applicant and approved by the Department, including any stipulations made upon approval.~~
4. "Migratory birds" means all species listed at 50 CFR 10.13, revised October 1 1999, not including any later amendments or editions, which is incorporated by reference in this Section. A copy of the incorporated ~~matter is on file with the Secretary of State and~~ material is available for inspection at any Department office, or it may be ordered from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.
5. "Taxa" means groups of animals within specific classes of wildlife occurring in ~~Arizona~~ the state with common characteristics that establish relatively similar requirements for habitat, food, and other ecological or behavioral factors pertinent to establishing standards of housing, care, or rehabilitation, as follows:
 - a. ~~Amphibians: all amphibians;~~
 - b. ~~Reptiles: all reptiles;~~
 - c. ~~Birds:~~
 - i. ~~Non-passerines, birds in any order other than those named below;~~
 - ii. ~~Raptors, birds in the orders Falconiformes or Strigiformes;~~
 - iii. ~~Quail, birds in the order Galliformes;~~
 - iv. ~~Doves, birds in the order Columbiformes;~~
 - v. ~~Hummingbirds, birds in the order Trochiliformes; and~~
 - vi. ~~Passerines, birds in the order Passeriformes.~~
 - d. ~~Mammals:~~
 - i. ~~Nongame mammals;~~
 - ii. ~~Bats: all bats;~~
 - iii. ~~Big game mammals other than cervids: bighorn sheep, bison, black bear, javelina, mountain lion, and pronghorn; and~~
 - iv. ~~Carnivores: bobcat, coati, coyote, foxes, ringtail, skunks, and weasel.~~
 - e. ~~All other systems of classification or nomenclature notwithstanding, endangered or threatened species and threatened native wildlife, as defined in R12-4-401, and golden eagles, Gila monsters, twin-spotted rattlesnakes, and banded rock rattlesnakes are not included in the taxa defined above and shall not be possessed under license unless specifically authorized on that license.~~

B. A wildlife rehabilitation license allows ~~the live~~ an individual to capture alive; transport; ~~possession temporarily possess;~~ rehabilitation rehabilitate; transfer to a practicing veterinarian for treatment or euthanasia or to another rehabilitator licensed for the wildlife; ~~or release; and euthanasia of or euthanize~~ the injured, diseased, disabled, orphaned, or otherwise debilitated live wildlife specified on the license. ~~The license may also allow the wildlife to be exported, transferred to a licensed zoo, or disposed of as directed by the Department~~ The license also allows an individual to export, transfer to a licensed zoo, or dispose of wildlife as directed in writing by the Department. A ~~person~~ wildlife rehabilitation license holder shall not ~~educationally display for educational purposes or, exhibit, or permanently possess~~ wildlife held under a wildlife rehabilitation the license. ~~The authorized activities are subject to Department evaluation of, and stipulations to, applications submitted in compliance with subsections (D) or (E)~~ The Department may add stipulations to a license, as stated in R12-4-409, if the Department finds it is necessary to do so after reviewing an application for a license, submitted as prescribed by (D), and evaluating the activities that an applicant proposes to perform. ~~The Department shall issue wildlife rehabilitation licenses subject to the following conditions:~~

1. ~~The Department shall issue a wildlife rehabilitation license only for the purpose of restoring wildlife to the wild through rehabilitative activities. All wildlife held under the license remains the property of the state and shall be returned to the Department upon request.~~

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

2. ~~The Department shall issue a wildlife rehabilitation license to provide a public service. The names and telephone numbers of all licensees are subject to public disclosure by the Department, and a licensee shall not charge a fee or other compensation for the wildlife rehabilitation functions performed;~~
 3. ~~The Department shall issue a wildlife rehabilitation license to an individual who is solely responsible for all expenses incurred and all actions taken under the license, including all actions and omissions of all agents and assistants; and~~
 4. ~~The Department shall issue a wildlife rehabilitation license that is valid only for the premises described on the license.~~
- C.** Before applying for a wildlife rehabilitation license, an individual shall take an examination administered and supervised by the Department that covers wildlife rehabilitation; handling, transport, humane treatment, and nutritional, behavioral, developmental, ecological, and habitat requirements of wildlife; captivity standards established under R12-4-428; human and wildlife safety considerations; and state laws regarding wildlife rehabilitation, specifically R12-4-409 and this Section. In order to take the test, an individual shall make an appointment with the Department to take the examination during normal business hours. An individual may request that the test be written or tape-recorded. The Department shall mail the results to the individual within 30 calendar days of the examination. The Department shall consider only those parts of the examination that are applicable to the taxa of wildlife for which the license is sought in establishing the qualifications of the applicant.
- C.** The following criteria are prerequisites for approval of a wildlife rehabilitation license:
1. ~~The privilege of the applicant or any agent to take or possess wildlife is not under current suspension or revocation by the government of any state or the United States.~~
 2. ~~The Department shall issue a license to rehabilitate migratory birds only to persons 18 years of age or older. A minor's parent or legal guardian shall cosign the application of a minor to rehabilitate any other species and shall ensure that the application is notarized before submittal. See subsection (B)(3).~~
 3. ~~The applicant shall provide documentation to prove one or more of the following:~~
 - a. ~~A valid, current license issued by a state veterinary medical examination authority, authorizing the applicant to practice as a veterinarian;~~
 - b. ~~A minimum of six months of experience performing wildlife rehabilitative work for an average of not less than eight hours per week for the taxa of animals covered under the license, while assisting a licensed wildlife rehabilitator, a veterinarian, or a state or federal wildlife agency; or~~
 - e. ~~A current, valid wildlife rehabilitation license, issued by the government of any state or the United States.~~
 4. ~~The applicant shall provide documentation that, within the last five years, the applicant has answered correctly at least 80% of the questions on a written or tape-recorded examination, supervised and administered by the Department, related to: wildlife rehabilitation; handling, transport, humane treatment, and nutritional, behavioral, developmental, ecological, and habitat requirements of wildlife; captivity standards established under R12-4-428; human and wildlife safety considerations; this Section; and R12-4-409.~~
 - a. ~~The Department shall administer the examination by appointment at any Department office during normal working hours.~~
 - b. ~~The Department shall mail the written score of the examination to the applicant within 30 calendar days of the examination date.~~
 - e. ~~The Department shall consider only those sections of the examination that are applicable to the taxa of wildlife for which the license is sought in establishing the qualifications of the applicant; and~~
 5. ~~Any licensee who, before the expiration of a Department license to rehabilitate wildlife, applies to continue without change the authorized activities for the authorized species and for no others is exempt from the written examination required by subsection (C)(4), unless written reports filed under subsection (Q) show that no rehabilitative functions were performed during the license period preceeding the one for which the application is submitted.~~
- D.** An applicant shall use a form available from any Department office to apply for a wildlife rehabilitation license. Applications and licenses issued under this Section shall reference the taxa defined in subsection (A) or shall specify specific species.
1. The applicant shall submit the following information on the form:
 - a. Name, date of birth, mailing address, and telephone number of the applicant;
 - b. Names, dates of birth, mailing addresses, and telephone numbers of all agents;
 - e. Street addresses or legal descriptions of all premises at which wildlife rehabilitation facilities would be established
 - d. The taxa or species of wildlife proposed to be rehabilitated; and
 - e. Signature of the applicant and date of application submittal.
 2. The applicant shall include with the form typed, signed statements executed by all proposed agents, acknowledging that their privilege to take or possess wildlife is not under current suspension or revocation by the government of any state or of the United States.
 3. The applicant shall also include with the form a typed, signed narrative statement demonstrating, describing, or including at a minimum the following:

Notices of Proposed Rulemaking

- a. Whether the applicant requests that methods of disposition of wildlife include export, transfer to a licensed zoo, or other methods under direction of the Department;
 - b. If the application concerns rehabilitation of taxa not currently authorized by the Department, a statement of the applicant's training and experience in handling, capturing, rehabilitating, and caring for, the taxa for which the application is submitted;
 - c. Detailed diagrams of all rehabilitation facilities in which wildlife would be held, including facilities to be used by agents. The diagrams must describe holding facility dimensions, though not necessarily to scale, materials, location relative to buildings and fences, and relevant information about proposed construction and expected completion dates; and
 - d. A description of the procedures to be employed to ensure the standards set in R12-4-428 are always met, including cleaning methods; food and water supply; shelter; bedding; and mechanisms for prevention of escape by wildlife and, for potentially dangerous animals, protection of human safety.
4. If required by subsection (C), the application shall include documentation of a passing score on the examination prescribed in subsection (C)(4).
5. The applicant shall submit one or more of the following with the application:
- a. A typed, signed statement that the applicant is a licensed, practicing veterinarian;
 - b. A typed, signed statement from the Department's Adobe Mountain Wildlife Center Coordinator that the Center will assist the applicant in providing rehabilitative treatment for the wildlife to be held under the license; or
 - c. A typed, signed statement from a licensed, practicing veterinarian that the veterinarian is reasonably available to give veterinary services requested by the licensee as necessary to facilitate rehabilitation of wildlife. The licensee shall be responsible for any veterinary expenses.
6. A licensee seeking renewal of a wildlife rehabilitation license without change of species, location, or design of facilities may reference supportive materials submitted previously, rather than submitting copies of the materials with the application for renewal.

An applicant shall apply for a wildlife rehabilitation license using a form available from the Department. The applicant shall provide the following information:

1. Name, address, telephone number, birthdate, physical description, and (if applicable) Department ID number;
2. Documentation that proves one or more of the following:
 - a. A valid, current license issued by a state veterinary medical examination authority that authorizes the applicant to practice as a veterinarian;
 - b. A minimum of six months of experience performing wildlife rehabilitative work for an average of at least eight hours per week for the taxa or species of animal in (D)(5) that is listed on the application; or
 - c. A current and valid license, permit, or other form of authorization issued by another state or the federal government that allows the applicant to perform wildlife rehabilitation.
3. Documentation that the applicant has answered correctly at least 80% of the questions on the examination in (C), and that the applicant took the examination within five years of applying for the license.
4. One or more of the following supporting documents:
 - a. A typed, computer or word processor printed, or legibly handwritten statement signed by the applicant that affirms that the applicant is a licensed, practicing veterinarian;
 - b. A typed, computer or word processor printed, or legibly handwritten statement signed by the Department's Adobe Mountain Wildlife Center Coordinator that the Center will assist the applicant in providing rehabilitative treatment for the wildlife to be held under the license; or
 - c. A typed, computer or word processor printed, or legibly handwritten statement signed by a licensed, practicing veterinarian that the veterinarian is reasonably available to give veterinary services requested by the applicant as necessary to facilitate rehabilitation of wildlife. The license holder shall be responsible for any veterinary expenses.
5. The wildlife taxa or species that will be used under the license. The Department shall only issue a wildlife rehabilitation license for the following taxa or species of wildlife:
 - a. Amphibians: all amphibians;
 - b. Reptiles: all reptiles;
 - c. Birds:
 - i. Non-passerines, birds in any order other than those named in (ii) through (vi);
 - ii. Raptors, birds in the orders Falconiformes or Strigiformes;
 - iii. Quails, birds in the order Galliformes;
 - iv. Doves, birds in the order Columbiformes;
 - v. Hummingbirds, birds in the order Trochiliformes; and
 - vi. Passerines, birds in the order Passeriformes.
 - d. Mammals:
 - i. Nongame mammals;

Notices of Proposed Rulemaking

- ii. Bats: all bats;
 - iii. Big game mammals other than cervids: bighorn sheep, bison, black bear, javelina, mountain lion, and prong-horn antelope; and
 - iv. Carnivores: bobcat, coati, coyote, foxes, raccoons, ringtail, skunks, and weasels.
 - e. The Department shall not issue a wildlife rehabilitation license for the following wildlife species unless the applicant specifically states the species on the license application:
 - i. Arizona ridge-nosed rattlesnakes;
 - ii. Banded rock rattlesnakes;
 - iii. Desert massasaugas;
 - iv. Flat-tailed horned lizards;
 - v. Gila monsters;
 - vi. Eagles; and
 - vii. Notwithstanding the taxa listed in (a) through (d), species listed in Federal Endangered and Threatened Wildlife and Plants, 50 CFR 17.11 and 17.12, revised as of August 4, 2004, and species listed in Wildlife of Special Concern.
- 6. If the applicant is applying for a wildlife rehabilitation license to perform authorized activities with migratory birds, the applicant shall meet the following criteria:
 - a. The applicant is at least 18 years old; or
 - b. The applicant has a parent or legal guardian cosign the application and have it notarized.
- 7. A typed, computer or word processor printed, or legibly handwritten narrative that describes the following:
 - a. The method of disposing of the wildlife that the applicant prefers: export, transfer to a licensed zoo, or another method as directed in writing by the Department; and
 - b. If the applicant applies to perform authorized activities with taxa or species of wildlife that are listed in (4)(e), a statement of the applicant's training and experience in handling, capturing, rehabilitating, and caring for the taxa or species.
- 8. The name, address, and telephone number of the location where the wildlife will be held, if applicable. Otherwise, the applicant shall provide the physical description of the location, including township, range, and section;
- 9. A detailed description or diagram of the facilities where the applicant will hold the wildlife, and a description of how the facilities comply with R12-4-428, and any other captivity standards that may be prescribed by this Section.
- 10. If the applicant is authorizing an agent, as defined in R12-4-401, the applicant shall include the information stated in (1), (3), (5), (6), (7), (8), (9), and (11) as applicable to the agent. The agent shall sign and date the affidavit stated in (11), but shall omit (d). By signing the affidavit, the agent attests that the information they have provided is true and correct to their knowledge and that they have not had their live wildlife privileges revoked in this state or any other state.
- 11. The applicant's signature and the date of signing. By signing the application, the applicant attests to the following:
 - a. The information the applicant has provided is true and correct to their knowledge;
 - b. The applicant is applying for the license for the sole purpose of restoring wildlife to the wild through rehabilita-tive activities;
 - c. The applicant understands that all wildlife held under the license remains the property of the state and shall be returned to the Department upon request.
 - d. The applicant is solely responsible for all expenses incurred and all actions taken under the license, including all actions and omission of all agents and assistants when they are performing activities authorized under the license; and
 - e. The applicant shall conduct rehabilitation at the location listed on the license; and
 - f. The applicant's live wildlife privileges are not revoked in this state, any other state, or the United States.
- E.** The Department shall issue a wildlife rehabilitation license in compliance with R12-4-106. The Department may deny a license or limit a license based upon the training and experience of the applicant. If the Department denies the application for a wildlife rehabilitation license, the Department shall proceed as prescribed by R12-4-409(D).
- F.** A wildlife rehabilitation license holder shall renew the license before it expires as stated in R12-4-409(M) and subsection (T) of this Section. If the license holder applies to renew the license as prescribed by subsection (D), the license holder may reference supportive material previously submitted to the Department if the license holder is not changing the spe-cies, location, or design of the facility where the wildlife will be held. The license holder shall retake the examination in subsection (B) if written reports submitted under subsection (S) indicate that the applicant did not perform any rehabilita-tive activities under the license.
- G.** A wildlife rehabilitation license holder shall capture, remove, transport, and release wildlife under this Section in a man-ner that is least likely to cause injury to the affected wildlife.
- H.** A wildlife rehabilitation license holder shall keep a current log that records the information specified under subsection (S).
- I.** A wildlife license holder shall participate in one of the following during the license period:
 - 1. Eight or more hours of continuing education sessions on the wildlife rehabilitation, offered by the Department at no

Notices of Proposed Rulemaking

- fee. The Department shall provide each license holder with a minimum of 30 calendar days' notice of the sessions.
2. Eight or more hours of continuing education sessions on wildlife rehabilitation offered by an accredited university or college; the National Wildlife Rehabilitation Council, R.R. 1, Box 125 E Brighton, IL 62012; or the International Wildlife Rehabilitation Council, P.O. Box 3007, Walnut Creek, CA 94598.
- ~~J.~~ A wildlife rehabilitation license holder shall obtain written authorization from the Department before allowing an individual to act as an agent. The agent shall have the authorization in possession and available for inspection while performing activities authorized by the license. The Department may suspend or revoke the license holder's license for violation of this Section.
- ~~E K.~~ A licensee wildlife rehabilitation license holder may, at any time during the license period, make a written request at any time during the license period to amend the license to add or delete agents an agent, to add or delete premises, or to obtain authority to rehabilitate additional taxa of wildlife. The request shall meet the requirements of subsections (C)(4) and (D)(1) through (D)(3). The Department shall grant or deny a request within 60 calendar days of receipt. To amend the license, the applicant shall submit the following:
1. To add or delete an agent, the information stated in (D)(1), (3), (5) through (9), and (11), as applicable to the agent;
 2. To add or delete premises, the information stated in (D)(1), (5), (8), (9), and (11); and
 3. To obtain authority to rehabilitate additional taxa or wildlife, the information stated in (D)(1) through (9) and (11).
- ~~F L.~~ A wildlife rehabilitation license holder may accept donations from the public to compensate for expenses related to activities authorized under the license, or to provide materials or facilities necessary to perform those activities.
- ~~G.~~ A licensee shall capture, remove, transport, and release wildlife under this Section in a manner that is least likely to cause injury to the affected wildlife.
- ~~H M.~~ A licensee wildlife rehabilitation license holder authorized to rehabilitate big game mammals, golden eagles, Gila monsters, twin-spotted rattlesnakes, banded rock rattlesnakes, endangered or threatened species, or threatened native wildlife as defined in R12-4-401 wildlife taxa or species listed in (D)(5)(d)(iii) and (iv) or (D)(5)(e) shall; contact the Department within 24 hours of receiving the individual animal; contact the Department for to obtain instructions in handling that animal. While awaiting instructions, emergency veterinary care shall be provided as necessary.
- ~~I N.~~ Except when the Department has authorized possession for a longer period, a licensee wildlife rehabilitation license holder shall not possess a raptor bird longer than 180 days; or other wildlife longer than 90 days; and all wildlife not releasable after these time-frames may be retained, transferred, disposed of, or euthanized as authorized by the Department. All wildlife held under the license remains the property of the state and shall be returned to the Department upon request. A licensee license holder shall submit a written request to the Department to hold wildlife in excess of this period. The Department may require the licensee license holder to provide a typed, computer or word processor printed, or legibly handwritten signed statement from signed by a licensed veterinarian listing the medical reasons for the extension if there is a dispute between the Department and the licensee license holder regarding the medical necessity for the requested extension. The Department shall grant or deny a request for extension within 10 days of receipt of the request or the veterinarian's statement. The licensee license holder may continue to hold the specified wildlife while the Department considers the request. The Department shall deny a request for extension in writing and shall include in the written denial specific, time-dated directions on disposition of the animal.
- ~~J O.~~ A licensee wildlife rehabilitation license holder may hold wildlife under a wildlife rehabilitation the license after the wildlife reaches a state of restored health only for the amount of time reasonably necessary to make humane disposition of the wildlife, but in no case not for longer than has been authorized under subsection (H) (N). Rehabilitated wildlife shall be released at an ecologically appropriate time of year and into a habitat suitable to sustain it:
1. In the same geographic area as the animal was originally obtained, except that birds may be released at any location statewide within the normal range of that species in ecologically suitable habitat; or
 2. In an area designated by the Department; and
 3. Without immediate threat to the animal of injurious contact with humans.
- ~~K P.~~ To permanently hold rehabilitated wildlife that is unsuitable for release, a licensee shall apply for a wildlife holding license under R12-4-417 A wildlife rehabilitation license holder shall apply for and obtain a wildlife holding license as prescribed by R12-4-417 in order to permanently hold rehabilitate wildlife that is unsuitable for release.
- ~~L Q.~~ Unless otherwise stipulated in the license, a licensee wildlife license holder shall dispose of all wildlife that is euthanized or that otherwise dies while held under license within 30 days of death by burial or incineration, except that the licensee license holder shall transfer all carcasses of endangered or threatened species, threatened native wildlife wildlife of special concern as defined in R12-4-401, or golden eagles to the Department.
- ~~M R.~~ A licensee wildlife rehabilitation license holder shall ensure that a copy of the approved license and application, including any stipulations placed on that license, accompanies any shipment or transport of wildlife under this Section, and is available for inspection at each of the premises authorized by the license.
- ~~N.~~ A licensee shall keep a current log that shows the date of acquisition, location, and disposition of all wildlife held under the license.
- ~~O S.~~ Before January 31 of each year, a licensee wildlife rehabilitation license holder shall file a written report on activities performed under the license for the previous calendar year. The licensee license holder shall report on a form available

Notices of Proposed Rulemaking

from the Department. The written report shall contain the following information:

1. The name, address, date of birth, and telephone number of the licensee and all agents;
2. The permit or license number of any federal permits or licenses that relate to any rehabilitative function performed by the licensee license holder; and
3. An itemized list of each animal held under the license during the calendar year for which activity is being reported. For each animal held by the licensee license holder or agent, the itemization shall include the: name of the species; condition that required rehabilitation; source, location, and date of acquisition; if reasonably determinable, age class at acquisition; status at disposition or end-of-year relative to the condition requiring rehabilitation; and method, place, and date of disposition. A copy of the rehabilitator's federal permit report of activities related to federally protected wildlife satisfies this reporting requirement for federally protected wildlife.

~~P.~~ A licensee shall participate in one of the following during the license period:

1. Eight hours or more of continuing education sessions on wildlife rehabilitation, offered by the Department at no fee. The Department shall provide each licensee with a minimum of 30 calendar days' notice of the sessions.
2. Eight hours or more of continuing education sessions on wildlife rehabilitation, offered by an accredited university or college; the National Wildlife Rehabilitators Association, R.R. 1, Box 125 E, Brighton, Illinois 62012; or the International Wildlife Rehabilitation Council, P.O. Box 3007, Walnut Creek, California 94598.

~~Q.~~ A licensee shall obtain written authorization from the Department under subsections (D) or (E) before designating any agent. The agent shall have the authorization in possession and available for inspection while in possession of wildlife. The licensee is responsible for acts of the agent if they fall within the framework of this Section. The Department may suspend or revoke the rehabilitation license for violation of this Section by an agent.

~~R.T.~~ A wildlife rehabilitation license expires on December 31 of the ~~second~~ third year following the date of issuance of the license.

~~S.U.~~ A wildlife rehabilitation license holder is subject to ~~R124409 and R12-4-428~~ R12-4-409, R12-4-428, and R12-4-430.

R12-4-424. White Amur Stocking and Holding License

A. For the purposes of this Section:

1. "Closed aquatic system" means any body of water, water system, canal system, series of lakes, canals, or ponds where triploid white amur are prevented from ingress or egress by any natural or man-made barrier, as determined by the Department.
2. "Triploid" means a species that has 3N chromosomes.

B. A white amur stocking and holding license allows for the ~~importation, transportation, stocking and possession of an individual to import, transport, stock, and possess~~ triploid white amur (*Ctenopharyngodon idellus* *Ctenopharyngodon idella*). The Department may make stipulations on what the license will allow, based on evaluation of the application. A white amur stocking license shall be obtained for each closed aquatic system, for each separately managed portion of a closed aquatic system, or for multiple separate closed aquatic systems owned, controlled, or legally held by the same applicant where stocking is to occur.

C. In addition to the requirements in A.R.S. § 17-317, the following criteria are prerequisites for approval of a white amur stocking application:

1. The proposed stocking site meets the definition of a "closed aquatic system."
2. The purpose of the stocking is control of aquatic weeds that interfere with recreational, domestic, municipal, agricultural, or industrial use of water; control of aquatic weeds that impair water quality; or for sale from licensed fish farms.
3. If the Department determines during the substantive review time frame for the special license identified in R12-4-106 and R12-4-409(A) that the stocking will be in watersheds containing threatened native wildlife as defined in R12-4-401, the applicant shall submit a written proposal that addresses the biological ramifications of the introduction. A determination by the Department that negative impact on Arizona wildlife may result from issuance of the license is sufficient grounds for denying a license. The proposal shall include:
 - a. The purpose of the introduction;
 - b. Expected benefits;
 - c. Possible negative impacts;
 - d. An evaluation of the ecology of "threatened native wildlife" species identified by the Department as the reason for requiring the proposal;
 - e. An evaluation of potential displacement of "threatened native wildlife" identified by the Department;
 - f. An evaluation of disease potential; and
 - g. A method for post introduction evaluation of status and impacts.

~~D.~~ An applicant for a white amur stocking and holding license shall use a form available from any Department office. The applicant shall provide the following information on the form:

1. ~~Name and address;~~
2. ~~Name and address of business and title of the position held by the applicant, if applicable;~~

Notices of Proposed Rulemaking

3. Name and address of suppliers;
 4. Name and legal description of the aquatic system to be stocked;
 5. Drainage;
 6. Purpose of stocking;
 7. Planned stocking date;
 8. Number and size of triploid white amur to be stocked; and
 9. Signature.
 1. Name, address, telephone number, birthdate, physical description, and Department ID number (if applicable) of the applicant;
 2. If the applicant will use the white amur for personal use or for a commercial purpose. If the applicant is applying for the license for a commercial purpose, the applicant shall also provide the name, address, and telephone number of the applicant's business;
 3. The purpose for stocking the wildlife:
 - a. Control of aquatic weeds that interfere with recreational, domestic, municipal, agricultural or industrial use of water;
 - b. Control of aquatic weeds that impair water quality; or
 - c. For sale from licensed fish farms.
 4. A detailed description or diagram of the aquatic system where the applicant will hold the white amur, as required by A.R.S. § 17-317, and a description of how the facilities meet the definition of a "closed aquatic system";
 5. The name, address, and telephone number of the location where the white amur will be stocked, if applicable. Otherwise, the applicant shall provide the physical location of the stocking site, including township, range, and section. If the applicant applies to stock white amur in more than one location, the applicant shall submit a separate application for each location. The following qualify as separate locations:
 - a. Each closed aquatic system;
 - b. Each separately managed portion of a closed aquatic system;
 - c. Multiple separate closed aquatic systems owned, controlled, or legally held by the same applicant where stocking is to occur;
 6. If the applicant will hold white amur at a business, the name, address, and telephone number of the business, and the title of the position held by the applicant;
 7. A detailed description of how the applicant will meet the requirements of A.R.S. § 17-317;
 8. The name, address, and telephone number of all white amur suppliers from whom the special license applicant will obtain white amur;
 9. The number and size of triploid white amur to be stocked;
 10. The date white amur will be stocked, or dates if stocking will take more than one day; and
 11. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that the applicant's live wildlife privileges are not revoked in this state, any other state, or by the United States.
- D.** The Department shall issue a white amur stocking and holding license as prescribed by R12-4-106. If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D). The Department has the authority to place additional stipulations on a white amur stocking license for additional reasons than those stated in R12-4-409(F) if the Department determines it is necessary to do so during the substantive review time-frame. If the Department determines during the substantive review time-frame that stocking white amur will take place in a watershed that contains wildlife listed in "Wildlife of Special Concern" as defined in R12-4-401, the Department has the authority to request that the applicant submit a typewritten, computer or word processor printed, or legibly handwritten proposal that addresses the biological consequences of introducing white amur. The proposal shall include:
1. The purpose of introducing white amur;
 2. Expected benefits of the introduction;
 3. Possible negative impacts of the introduction;
 4. An evaluation of the ecology and potential displacement of wildlife species listed in "Wildlife of Special Concern" identified by the Department;
 5. An evaluation of disease potential; and
 6. A method for evaluating the status of wildlife listed in "Wildlife of Special Concern" and the impact introducing white amur has had on that wildlife after white amur is introduced.
- E.** If the Department denies the application for a special license, the Department shall proceed as prescribed by R12-4-409(D). The Department shall deny a white amur stocking license if the Department determines that issuing the license may result in a negative impact on state wildlife.
- F.** A white amur stocking and holding license holder shall ensure that all shipments of white amur are accompanied by certification issued by the U.S. Fish and Wildlife Service that verifies the white amur are triploid. The license holder shall provide a copy of the certificate to the Department before any stocking or restocking.

Notices of Proposed Rulemaking

- ~~E G.~~** A licensee white amur stocking and holding license holder shall report all restocking of white amur to the Department on forms provided by the Department before restocking. The licensee license holder shall provide the following information on the form:
- ~~1. Name and address of the licensee as shown on the current white amur stocking license;~~
 - ~~2. Name and address of suppliers;~~
 - ~~3. Name and legal description of aquatic system to be restocked;~~
 - ~~4. Drainage;~~
 - ~~5. Purpose of restocking;~~
 - ~~6. Planned restocking date;~~
 - ~~7. Number and size of triploid white amur to be restocked; and~~
 - ~~8. Signature.~~
 1. Name, address, telephone number, birthdate, physical description, and Department ID number of the license holder as it appears on the current license;
 2. If the applicant will use the white amur for a commercial purpose, the name, address, and telephone number of the applicant's business;
 3. The purpose for restocking the white amur:
 - a. Control of aquatic weeds that interfere with recreational, domestic, municipal, agricultural or industrial use of water;
 - b. Control of aquatic weeds that impair water quality; or
 - c. For sale from licensed fish farms.
 4. A detailed description or diagram of the aquatic system where the applicant will hold the white amur, and a description of how the facilities meet the definition of a "closed aquatic system";
 5. If the applicant will hold white amur at a business, the name, address, and telephone number of the business, and the title of the position held by the applicant;
 6. The name, address, and telephone number of all white amur suppliers from whom the special license applicant will obtain white amur;
 7. The number and size of triploid white amur to be stocked;
 8. The date white amur will be stocked, or dates if stocking will take more than one day; and
 9. The applicant's signature and the date of signing. By signing the application, the applicant attests that the information they have provided is true and correct to their knowledge and that they have not had their live wildlife privileges revoked in this state or any other state since the current license was issued.
- ~~H.~~** Authorization for restocking white amur will not exceed 20 days and is valid only during the dates stipulated on the license.
- ~~F I.~~** All shipments of white amur shall be accompanied by certification issued by the U.S. Fish and Wildlife Service verifying triploidy, and a licensee shall provide a copy of the certificate to the Department before stocking. A white amur stocking license holder that applies to renew the license shall pay fees as prescribed by R12-4-102.
- ~~G J.~~** A white amur stocking and holding license holder is subject to R12-4-409.
- ~~H.~~** This rule is effective July 1, 2001.

R12-4-425. Restricted Live Wildlife Lawfully Possessed without License or Permit ~~Prior to~~ Before the Effective Date of Article 4 or Any Subsequent Amendments

- A.** ~~Any person lawfully possessing~~ An individual that lawfully possessed restricted live wildlife without a license or permit from the Department ~~prior to before~~ the effective date of this rule Section or any subsequent amendments to this Section may continue to possess ~~this the~~ wildlife and to use ~~this wildlife it~~ for any purpose that was lawful ~~prior to before~~ the effective date of this rule Section or any subsequent amendments, and no special license shall be required provided:
- ~~1. The person individual notifies the Department's Phoenix office in writing within 30 calendar days of the effective date of this rule~~ of the restricted live wildlife held, including the number of individuals of each species and the purpose for which it is used; or and
 2. The individual provides this notice within 30 calendar days of the effective date of this Section or any subsequent amendments to this Section; or
 3. The person individual maintains documentation of the restricted live wildlife held, including the number of individuals of each species and the purpose for which it is used. Documentation shall be notarized and dated within 30 calendar days of the effective date of this rule Section or the effective date of any subsequent amendments in order to be valid.
- B.** ~~Written notification or documentation required in subsection (A) shall contain the name and address of the person possessing the restricted live wildlife and the location where the wildlife is held. An individual that possesses restricted live wildlife under this Section shall include their name, address, and the location where the wildlife is held in the written notification or documentation required in subsection (A). The Department shall acknowledge receipt of notification in writing. Those persons maintaining individuals that maintain~~ their own documentation shall make it available for inspection

Notices of Proposed Rulemaking

upon request of a ~~game ranger~~ a designated Department employee.

- C. ~~Wildlife possessed pursuant to this rule may be disposed of~~ An individual that possesses wildlife under this Section may dispose of it only by the following methods:
1. Exportation;
 2. Within ~~Arizona~~ the state, to a holder of a special license, when that special license authorizes possession of the species involved;
 3. ~~Euthanization~~ Euthanasia; or
 4. As otherwise directed ~~in writing~~ by the Department.
- D. ~~If an individual transfers restricted live wildlife possessed under this Section to a special license holder, the license holder must use and possess the wildlife only as prescribed by that special license.~~
- E. ~~An individual that possesses wildlife under this Section shall dispose of any offspring of that wildlife by export, euthanasia, or as otherwise directed in writing by the Department.~~
- F. ~~An individual that possesses wildlife under this Section or its offspring shall not import the wildlife back into the state unless that individual obtains a special license.~~
- G. ~~This rule does not apply to desert tortoises, which are exempted pursuant to R12-4-407. An individual shall not possess a desert tortoise (Gopherus agassizii) under this Section. Desert tortoises are exempted under R12-4-407.~~

R12-4-426. Possession of Primates

- A. For the purposes of this Section, the following definitions apply:
1. "Primate" means a non-human ~~primate~~ animal in the order Primate not listed in subsection R12-4-406(A)(4) (E)(4).
 2. "Infant" means an animal weighing less than 50% of the weight of an adult as identified in "The Pictorial Guide to Living Primates," Pagonias Press 1996, and not including any later edition. This material is incorporated by reference. ~~A copy of the incorporated material and is on file with the Secretary of State and available from all Arizona Game and Fish Department regional offices.~~
 3. "Zoonotic" means ~~a disease that can be transmitted to humans by vertebrate animals.~~
- B. ~~A person~~ An individual shall not buy, sell, barter, gift, or import an infant primate in ~~Arizona~~ this state.
- C. ~~A person~~ An individual may import a non-infant primate into ~~Arizona~~ this state only if:
1. ~~The primate has been tested for and reported to be disease free from any zoonotic disease that poses a serious health risk, including tuberculosis, Simian Herpes B virus, and Simian Immunodeficiency Virus, as determined by the Arizona Game and Fish Department to be appropriate to the species being imported; and The individual ensures that the primate is tested and reported to be free of any zoonotic disease, as defined in R12-4-401, that poses a serious health risk as determined by the Department. Zoonotic diseases that pose a serious health risk include, but are not limited to:~~
 - a. Tuberculosis;
 - b. Simian Herpes B virus; and
 - c. Simian Immunodeficiency Virus;
 2. ~~Test dates and test result dates are within 30 days prior to the date of importation; and A qualified individual, as determined by the Department, performs the test and provides the test results; and~~
 3. ~~Tests were done by and test results were determined by qualified persons, as determined by the Arizona Game and Fish Department The tests required by (1) are conducted no more than 30 days before the primate is imported and the results are received prior to import.~~
- D. ~~A primate shall be contained~~ A legal owner of a primate shall contain the primate within the confines of the legal owner's private property, ~~except as follows: A legal owner of a primate may only transport the primate by cage, crate or carrier. A legal owner of a primate shall only transport the primate to the following locations:~~
1. ~~When transported in a cage, crate, or carrier to~~ To or from a licensed veterinarian; or
 2. ~~When transported in a cage, crate, or carrier into~~ Into or out of ~~Arizona~~ the state for lawful purposes, or within ~~Arizona~~ the state to complete a lawful sale.
- E. A primate that bites, scratches, or otherwise exposes a human to pathogenic organisms, as determined by the ~~Arizona Game and Fish Department~~, shall be examined and laboratory tested for the presence of pathogens as follows:
1. ~~The Arizona Game and Fish Department Director or the Director's designee shall prescribe examinations and laboratory testing for the presence of pathogens.~~
 2. ~~An Arizona licensed veterinarian shall perform examinations and laboratory test specimen collection and submission. The owner of a primate that bites, scratches, or otherwise exposes a human to pathogenic organisms shall have the primate examined by a state licensed veterinarian who shall perform any examinations or laboratory tests as directed by the Department. The licensed veterinarian shall provide the laboratory results to the Director or the Director's designee within 24 hours of receiving the results. The Department shall notify the exposed individual and the Department of Health Services, Vector Borne and Zoonotic Disease Section within 10 days of receiving notice of the test results.~~
 3. ~~An Arizona licensed veterinarian examining or laboratory testing a primate shall immediately report the results of an examination or laboratory test, by phone and in writing, to the Arizona Game and Fish Department Director or the~~

Notices of Proposed Rulemaking

Director's designee.

4. The legal owner of the primate shall pay all costs associated with the examination, laboratory testing, and maintenance of the primate.
- F. A primate that tests positive for a zoonotic disease that poses a serious health risk to humans, or is involved in more than one incident of biting, scratching, or otherwise exposing a human to pathogenic organisms as determined by the Arizona Game and Fish Department, shall be maintained in captivity or disposed of as directed in writing by the Arizona Game and Fish Department Director or the Director's designee, or disposed of as agreed to by the primate owner and the Department Director or the Director's designee.

R12-4-427. ~~Rehabilitation Exemption~~ Exemptions from Requirements to Possess a Wildlife Rehabilitation License

- A. ~~Injured, orphaned, or otherwise debilitated live wildlife as listed below, not including eggs, and not including threatened native wildlife as defined in R12-4-401, may be possessed, provided with rehabilitative care, and released to the wild with no special license, provided that no more than 25 individual animals shall be possessed simultaneously in the aggregate, and no individual animal shall be possessed for more than 60 consecutive calendar days. An individual may possess, provide rehabilitative care to, and release to the wild any live wildlife listed below that is injured, orphaned, or otherwise debilitated:~~
 1. The order Passeriformes, passerine birds;
 2. The order Columbiformes, doves;
 3. The family Phasianidae, quail, pheasant, partridge, and chukars;
 4. The order Rodentia, rodents; and
 5. The order Lagomorpha, hares and rabbits; except
 6. An individual shall not possess the following under the provisions of this Section:
 - a. Eggs of wildlife;
 - b. Wildlife listed as Wildlife of Special Concern, as defined in R12-4-401; or
 - c. More than 25 animals at the same time.
- B. ~~A hunting license shall not be required to take wildlife subject to this rule, but the wildlife may be taken only by hand or by hand-held implement. An individual is not required to possess a hunting license to take wildlife alive listed in (A). An individual shall only take wildlife by hand or by a hand-held implement.~~
- C. An individual shall not possess wildlife under this Section for more than 60 days.
- ~~D.~~ The exemptions granted by this rule Section shall not apply to any individual who, by his or her own action, has unlawfully injured or orphaned the wildlife.
- ~~D E.~~ All wildlife held pursuant to this rule shall be released when rehabilitated, within the 60-day period, into habitat suitable to sustain them, as close as possible to the same geographic area from which they were originally taken. Wildlife not suitable for release to the wild within 60 days shall be given to a licensed rehabilitator or licensed veterinarian, or application must be made for a wildlife holding permit pursuant to R12-4-417, or wildlife shall be humanely killed. If the wildlife is rehabilitated and suitable for release, the individual that possesses the wildlife shall release it within the 60 day time-period stated in subsection (C) into a habitat that is suitable to sustain them, or as close as possible to the same geographic area from where it was taken. If the wildlife is not rehabilitated within the 60 day time-period or if the wildlife requires care normally provided by a veterinarian, the individual that possesses it shall:
 1. Transfer it to a wildlife rehabilitation license holder or veterinarian;
 2. Humanely kill it; or
 3. Obtain a wildlife holding permit as prescribed by R12-4-417.
- ~~E F.~~ This rule Section does not exempt any person an individual from the requirements of federal law.

R12-4-428. Captivity Standards

- A. ~~All wildlife held pursuant to a special license shall be kept in as humane a manner as the licensed purpose allows. An individual that holds a special license listed in R12-4-409(A) shall keep all wildlife held under the license in as humane a manner as the activities authorized by the license allow, to safeguard and protect the interests of the wildlife held. Licensees A special license holder subject to the provisions of this rule Section shall comply with the minimum standards for humane treatment prescribed by this rule Section. The term For the purposes of this Section, "animal" as used in this rule means any wildlife held pursuant to under a special license, unless otherwise indicated.~~
- B. ~~All A~~ A special license holder shall ensure that all facilities shall required by their special license meet the following minimum standards.
 1. The facility shall be constructed of such material and be of such strength as is appropriate for the nature of the animal held. The facility shall be properly braced and constructed of material of sufficient strength to resist any force the animal may be capable of exerting against it. The facility shall be constructed in such a manner as to reasonably prevent the animal's escape or the entry of unauthorized persons individuals or animals. The housing facility shall be structurally sound and shall be maintained in good repair in order to protect the animals that are held from injury and to facilitate the humane practices prescribed by this rule Section.

Notices of Proposed Rulemaking

2. ~~When~~ If required to comply with related provisions of this ~~rule~~ Section, there shall be safe, reliable and adequate electric power to the facility. All electric wiring shall be constructed and maintained ~~pursuant to~~ in accordance with all applicable governmental building codes. Such electrical construction and maintenance shall be sufficient to assure that no animal has direct contact with any electrical wiring or electrical apparatus and is fully protected from any possibility of shock or electrocution from any such electric conducting materials.
3. Every animal shall be supplied with sufficient potable water to meet its needs. If potable water is not accessible to the animal at all times, it shall be provided as often as necessary for the health and comfort of the animal, and the ~~licensee~~ license holder shall ensure that the level of available water is monitored once daily or more often as the needs of the animal dictate. All water receptacles shall be kept in clean and sanitary condition.
4. Food shall be wholesome, palatable, and free from contamination, and of sufficient appeal, quantity, and nutritive value to maintain each animal that is held in good health. Each animal's diet shall be prepared based upon the nutritional needs and preferences of the animal with consideration for the age, species, condition, size, and type of the animal, and all veterinary directions or recommendations in regard to diet. The quantity of food supplied to each animal shall be sufficient to meet its needs and keep it in good health. Each animal shall be fed as often as its needs dictate, taking into consideration hibernation, veterinary treatment or recommendation, normal fasts or other professionally accepted humane practices. The ~~licensee~~ license holder shall ensure that the level of available food for each animal is monitored once daily, except for those periods of time ~~where~~ when professionally accepted humane practices dictate that the animal not consume any food during the entire day. Food and food receptacles, if used, shall be sufficient in quantity and accessible to all animals in the facility and shall be placed to minimize potential contamination. Food receptacles shall be kept clean and sanitary at all times. Any self-feeding food receptacles shall function properly and the food they provide shall not be subject to deterioration, contamination, molding, caking, or any other process which would render such food unsafe or unpalatable for the animal to be fed. Appropriate means of refrigeration shall be provided for supplies of perishable animal foods.
5. The facility shall be kept sanitary and regularly cleaned as the nature of the animal requires and allows. Adequate provision shall be made for the removal and disposal of animal waste, food waste, unusable bedding materials, trash, debris and dead animals not intended for food. The facility shall be maintained to minimize the potential of vermin infestation, disease, and unseemly odors. Excreta shall be removed from the primary enclosure facility as often as necessary to prevent contamination of the animals and to minimize hazard of disease and to reduce unseemly odors. The sanitary condition of the facility shall be monitored by the licensee at least daily. When the facility is cleaned by hosing, flushing or the introduction of any chemical substances, adequate measures shall be taken to ensure the animal has no direct contact with any chemical substance and is not directly sprayed with water, steam or chemical substances or otherwise wetted involuntarily.
6. A sanitary and humane method shall be provided to rapidly eliminate excess water from the facility. If drains are utilized, they shall be properly constructed and kept in good repair to avoid foul odors, and installed so as to prevent backup or accumulation ~~or of~~ debris or sewage.
7. No animal shall be exposed to any human activity or environment not intended by the special license which may have an inhumane or harmful affect upon the animal.
8. Facilities shall not be constructed or maintained in proximity to any physical condition which may give rise to any health threat to the animal including, but not limited to, trash or garbage collection sites and/or pools of standing water. All ~~persons caring~~ individuals that care for the animals shall maintain themselves in a sufficiently clean condition when dealing in or around the animal so as to minimize any threat to the health of the animal.
9. All animals housed in the same facility or within the same enclosed area shall be compatible and shall not pose a substantial threat to the health, life or well-being of any other animal in the same facility or enclosure, whether or not the other animals are held ~~pursuant to~~ under a special license. This shall not apply to live animals placed as food items in the enclosures.
10. Facilities for the enclosure of animals shall be constructed and maintained to provide sufficient space to allow each animal adequate freedom of movement to make normal postural and social adjustments. The facility area shall be large enough and constructed in such a manner to allow the animal proper and adequate exercise as is characteristic to each animal's natural behavior and physical need. Facilities for digging or burrowing animals shall have secure safe floors below materials supplied for such digging or burrowing activity. Animals which naturally climb shall be provided with safe and adequate climbing apparatus. Animals which naturally live in an aquatic environment shall be supplied with sufficient access to safe water so as to meet their aquatic behavioral needs.
11. ~~Licensees~~ A special license holder shall ensure that a sufficient number of properly trained personnel are utilized to meet all the humane husbandry practices ~~set forth in this rule~~ prescribed by this Section. The ~~licensee~~ license holder shall be responsible for the actions of all animal care personnel and all other ~~persons coming~~ individuals that come in contact with the animals.
12. The facility and holding environment shall be structured to reasonably promote the psychological well-being of any primate held ~~pursuant to~~ under a special license.
13. ~~Licensees, except holders of~~ Except for wildlife hobby ~~licenses issued pursuant to R12-4-419~~ possessing license

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

holders that possess fewer than 25 50 birds, and except for licensees in possession of and license holders that possess animals for less than one year, a special license holder shall designate a ~~veterinary doctor~~ veterinarian licensed to practice in ~~the State of Arizona~~ this state as the primary treating veterinarian for each individual species of animal to be held pursuant to under any special license issued. The licensee license holder shall ensure that all animals in their care receive proper, adequate and humane veterinary care as the needs of each animal dictate. Each animal held for one year or more and each facility used shall be inspected by the attending veterinarian at least once every year. Every animal shall receive veterinary care whenever it appears that such animal is ill, wounded, diseased, infected by parasites or behaving in a substantially abnormal manner, including but not limited to exhibiting loss of appetite or disinclination to normal physical activity. All medications, treatments and other directions prescribed by the attending veterinarian shall be properly administered by the licensee. No prescription medicine or medical treatment shall be administered by any ~~licensee~~ license holder unless under the direction of a veterinarian.

14. Any animal ~~which~~ that is suspected or diagnosed to harbor any infectious or transmissible disease, whether or not the animal is held ~~by~~ under a special license, shall be isolated immediately upon such suspicion or diagnosis from any animal to whom such disease could be transmitted. Such isolated animal shall continue to be kept in a humane manner and facility as required to this rule. Subsequent to the presence of an animal with an infectious or transmissible disease in any animal facility, whether or not the animal is held ~~by~~ under a special license, such facility shall be reasonably sanitized so as to reasonably eliminate the chance of other animals being exposed to infection. Such sanitation procedures may include, but not necessarily be limited to, the washing of facilities or animal-related materials with hot water and appropriate antibacterial chemical agents ~~as well as~~ and appropriate soaps or detergents; the appropriate application of steam under pressure; and the replacement of gravel, sand, water, food and/or dirt. All residue of chemical agents utilized in such sanitation process shall be reasonably eliminated from the facility before any animal is returned ~~thereto~~ to the facility. Parasites and avian and mammalian pests shall be controlled and eliminated so as to ensure the continued health and well-being of all animals.

C. ~~All~~ A special license holder shall ensure that all indoor facilities ~~shall~~ meet the following standards in addition to those set forth in subsection (B).

1. Heating and cooling facilities shall be supplied sufficient to regulate the temperature to protect the animals from extremes of temperature as the nature of the wildlife requires and to provide a healthful and humane living environment and prevent discomfort to the animal. The ambient temperature shall not be allowed to fall below nor rise above temperatures compatible with the health, comfort and humane care of any animal.
2. Indoor facilities shall be adequately ventilated by natural or mechanical means to provide for the healthful and humane keeping of any animal and prevent the discomfort of any animal. Such facility shall be provided with fresh air, either by means of windows, doors vents, fan or air conditioning sufficient to meet the humane needs of any animal and shall be constructed to minimize drafts, odors and moisture condensation.
3. Indoor facilities shall have lighting appropriate to the nature of the animals being kept therein by either natural or artificial means or both. Lighting shall be of good quality, distribution and duration as appropriate for the needs and nature of the animals held. Lighting shall be utilized in regular cycles as the animal's needs may dictate. Lighting shall be available which is of uniform distribution and sufficient intensity to permit routine inspection and cleaning of the facility. Lighting shall be designed to protect the animals from excessive or otherwise harmful aspects of illumination.

D. ~~All~~ A special license holder shall ensure that all outdoor facilities ~~shall~~ meet the following standards in addition to those set forth in subsection (B).

1. If sunlight is likely to cause overheating or discomfort of any animal, sufficient shade by natural or artificial means shall be provided to allow all animals kept outdoors to humanely protect themselves from any harmful affects of direct sunlight.
2. Sufficient natural or artificial shelter appropriate to humanely protect animals from normally expected local climatic conditions through the year shall be provided for all animals to prevent any discomfort or harm to the animals. No animal shall be exposed to any climatic condition which is potentially harmful to such animal. Individual animals shall be acclimated to outdoor climatic conditions before they are housed in any outdoor facility or otherwise exposed to the extremes of climate.

E. ~~When animals~~ If an animal must be handled, they shall be the special license holder that possesses it shall ensure that the animal is handled in an expeditious and careful manner to ensure no unnecessary discomfort, behavioral stress or physical harm to such handled the animal. Animals An animal that is transported shall be transported in an expeditious, careful, and humane fashion. During periods of transport, animals an animal shall be made as humanely secure as reasonably possible. No animal shall be transported in any manner that poses a substantial threat to the life, health, or behavioral well-being of the animal. All transportation facilities and services utilized in regard to animals used to transport the animal shall provide for the basic humane needs of each the animal during periods where when the animal is held in a transportation facility, including but not necessarily limited to providing the animal with adequate food, adequate water, adequate sanitary conditions, adequate ventilation, and any medication as prescribed by the attending veterinarian. If any animal is placed on public exhibit or educational display, such animal shall be handled in a manner minimizing the risk of harm to

Notices of Proposed Rulemaking

members of the public and to the animal itself; minimization of risk shall include but not necessarily be limited to sufficient distance existing between the animal and the viewing public to assure the safety of both the public and the animals. Any restraint used on any animal shall be humane in nature and not likely in either its design or use to cause physical harm or discomfort to the restrained animal except when discomfort is necessary to control the animal due to its size or strength.

- F. The Department may impose additional requirements ~~in regard to on~~ facilities ~~to be utilized for the keeping of any animal as the nature and the~~ that hold animals if it becomes necessary to meet the needs of the particular animal and to ensure public health and safety ~~dietate~~. Such additional special license facility requirements shall be set forth in writing by the Department at the time ~~of the issuance of~~ the special license is issued. Any ~~such notice of~~ additional requirements for housing facilities shall specify the reason necessitating such additional measures.

R12-4-430. Importation, Handling, and Possession of Cervids

- A. For the purposes of this Section, the following definitions apply:

1. "Cervid" means a mammal classified as a Cervidae or member of the deer family found anywhere in the world, as defined in the taxonomic classification from Volumes I and II of Walker's Mammals of the World. A copy is available for inspection at any Department office.
2. "Native cervid" means any member of the deer family in the genus Alces, common name moose; the genus Odocoileus, common name white-tailed and mule deer; or the genus Cervus, common name red deer, wapiti, and elk; or the genus Rangifer, common name reindeer and caribou.
3. ~~"Private game farm" means any facility licensed by the Arizona Game and Fish Department under R12-4-413.~~
4. "Wildlife disease" means a disease that poses a health risk to wildlife in Arizona.
- ~~5~~ 4. "Zoo" means any facility licensed by the Arizona Game and Fish Department under R12-4-420.
- ~~6~~ "Zoonotic" means a disease that can be transmitted to humans from vertebrate animals.

- B. No change
C. No change
D. No change
E. No change
F. No change
G. No change
H. No change
I. No change
J. No change
K. No change
L. No change
M. No change
N. No change
O. No change
P. No change

NOTICE OF PROPOSED RULEMAKING

TITLE 15. REVENUE

**CHAPTER 12. DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT COMMISSION**

[R05-384]

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R15-12-101 | Amend |
| R15-12-204 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. § 42-1005
Implementing statute: A.R.S. § 42-17001; A.R.S. § 42-17054
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 11 A.A.R. 4145, October 21, 2005

Notices of Proposed Rulemaking

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Dan Jensen, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6377
Fax: (602) 716-7995
E-mail: DJensen@azdor.gov

Please visit the ADOR web site to track the progress of these rules and other agency rulemaking matters at www.azdor.gov/tra/draftdoc.htm.

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The following rulemaking is pursuant to changes recommended in the latest five-year review report of the rules in Chapter 12 of Title 15 applicable to the Property Tax Oversight Commission. The Department is amending these rules to conform to current rulewriting standards and recent statutory changes.

The definitions of "political subdivision" and "commission" in R15-12-101 are repetitive of those definitions found in A.R.S. § 42-17001. The definition of "political subdivision" in R15-12-101 is also inconsistent with that definition found in the statute.

R15-12-204 pertaining to political subdivision agreements is inconsistent with A.R.S. § 42-17054(B). When that statute was amended by Laws 2001, ch. 267, § 42, the time limit for filing disagreements with the final levy limit worksheet was changed from 3 to 10 days. The current version of the rule has not been changed to reflect this statutory amendment.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

There should be little to no economic impact associated with amending these rules. This is because the amendments merely change inconsistencies between the implementing statutes and the rules. Because the statutes clear language trumps these inconsistencies, amending the rules only provides clarification and reduces error. The rule changes will benefit taxpayers who may mistakenly rely on the time limit in R15-12-204 by giving them the full amount of time granted them in the statute to file disagreements with the final levy limit worksheet.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Dan Jensen, Tax Analyst
Address: Tax Policy and Research Division
Arizona Department of Revenue
1600 W. Monroe, Room 810
Phoenix, AZ 85007
Telephone: (602) 716-6377
Fax: (602) 716-7995
E-mail: DJensen@azdor.gov

10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

No oral proceeding is scheduled. Under A.R.S. § 41-1023(C), an oral proceeding will be scheduled if a written request is submitted to the person identified in item 4 within 30 days after publication of this notice.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

None

13. The full text of the rules follows:

TITLE 15. REVENUE

**CHAPTER 12. DEPARTMENT OF REVENUE
PROPERTY TAX OVERSIGHT COMMISSION**

ARTICLE 1. GENERAL PROVISIONS

Section

R15-12-101. Definitions

ARTICLE 2. PROPERTY TAX LEVY LIMITS

Section

R15-12-204. Political Subdivision Agreement

ARTICLE 1. GENERAL PROVISIONS

R15-12-101. Definitions

Unless the context requires otherwise, the following definitions shall apply:

1. ~~“Commission” means the Property Tax Oversight Commission as established by A.R.S. § 42-17002.~~
- 2-1. “Excess collections” means the amount collected during the previous fiscal year in excess of the previous fiscal year’s maximum allowable primary property tax levy.
- 3-2. “Excess expenditures” means the amount under A.R.S. § 42-17051(C) that is certified by the Auditor General’s office.
4. ~~“Political subdivision” means counties, cities including charter cities, towns, and community college districts.~~
- 5-3. “Quorum” means a majority of the members of the Commission.

ARTICLE 2. PROPERTY TAX LEVY LIMITS

R15-12-204. Political Subdivision Agreement

- A. If a political subdivision disagrees with the county’s final levy limit worksheet calculations, the political subdivision shall, within ~~three-ten~~ days of receipt of the county’s calculations, file in writing with the Commission a statement of disagreement and the figures it deems appropriate. Failure to act within the ~~three ten~~ days shall be deemed agreement by the political subdivision.
- B. Upon timely petition of the political subdivision for good cause shown, or on its own motion, the Commission may permit the political subdivision to present objections to specific items at a later date.